No. 84-1015

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In The

Supreme Court of the United States

BOROUGH OF DEMAREST, ELIAS M. ELIASOF, EUGENE BARDEN, and EDWARD W. JANSEN,

Petitioners,

vs.

TOWNSHIP OF MAHWAH, JOANNE MAKELY, FRANK P. KRAUS, NEILAN BOMAN, and BERGEN COUNTY BOARD OF TAXATION,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

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Lyon Appellate Printers, Inc. • NJ (201) 257-6850 • NY (212) 840-9494 • PA (215) 563-5587
MA (617) 542-1114 • DC (202) 783-7288 • USA (800) 5 APPEAL

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QUESTIONS PRESENTED

1. Whether equal protection of the laws is denied to citizens of a state when a state statute selects municipalities in only 2 of 21 counties for preferential tax treatment based upon a classification relating to the population of the included counties and excludes all equally-positioned citizens of the other 19 counties from tax relief.

2. Whether equal protection of the laws is denied when a state statute compensates one municipality for non-existent governmental costs by requiring the taxpayers of other municipalities to contribute their tax dollars for these phantom costs based upon a formula unrelated to the *actual* cost of the governmental burdens.

LIST OF PARTIES

The following is a list of all of the parties to the within proceedings in the court below:

Municipal Entities

Bergen County Board of Taxation
Bergen County
Borough of Alpine
Borough of Allendale
Borough of Carlstadt
Borough of Closter
Borough of Cresskill
Borough of Demarest
Borough of Englewood Cliffs
Borough of Fair Lawn
Borough of Fairview
Borough of Fort Lee
Borough of Little Ferry
Borough of Lodi
Borough of Paramus (*amicus curiae*)
Borough of Ridgefield Park
Borough of Teterboro
City of Hackensack
Township of Cedar Grove (*amicus curiae*)
Township of Mahwah
Township of Teaneck

Individuals

Eugene P. Barden
Neilan Boman
Nicholas Corbiscello
Elias M. Eliasof
Edward W. Jansen
Frank P. Kraus
Joanne Makely
Werner H. Schmid

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No.

In The

Supreme Court of the United States

October Term, 1984

BOROUGH OF DEMAREST, ELIAS M. ELIASOF, EUGENE BARDEN, and EDWARD W. JANSEN,

Petitioners,

vs.

TOWNSHIP OF MAHWAH, JOANNE MAKELY, FRANK P. KRAUS, NEILAN BOMAN, and BERGEN COUNTY BOARD OF TAXATION,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

The petitioners, Borough of Demarest, Eugene P. Barden, Elias M. Eliasof, and Edward Jansen, respectfully pray that a writ of certiorari issue to review the judgment and opinion of the New Jersey Supreme Court entered in this proceeding on January 14, 1985.

OPINIONS BELOW

The opinion of the New Jersey Supreme Court filed January 14, 1985, affirming in part and reversing in part the Superior Court of New Jersey, Appellate Division's judgment is reprinted in full in the Appendix hereto. That opinion is published as 98 N.J. 268 (1985).

The opinion of the Superior Court of New Jersey, Appellate Division, filed June 20, 1983, affirming the Tax Court of New Jersey's judgment is reprinted in full in the Appendix hereto. That opinion is published as 190 N.J. Super. 84 (App. Div. 1983).

The opinion of the Tax Court of New Jersey filed November 20, 1981, declaring various New Jersey statutes unconstitutional is reprinted in full in the Appendix hereto. That opinion is published as 3 N.J. Tax 513 (Tax Ct. 1981).

JURISDICTION

The judgment and opinion of the New Jersey Supreme Court was entered on January 14, 1984. The jurisdiction of this Court is invoked under 28 U.S.C., § 1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fourteenth Amendment, Section I:

> "All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor

shall any State deprive any persons of life, liberty or property without due process of law; nor deny to any person within its jurisdiction equal protection of the laws."

N.J.S.A. 54:.4-5:

"A taxing district in a county of the first class having in excess of eight hundred thousand population in which there has been located a State or county institution other than a park commission or lands owned or occupied by a park commission occupying more than two hundred acres and not in excess of four hundred acres of land, in the aggregate, shall have remitted or rebated by the county treasurer a sum equal to one-half of the county tax rate applied to the entire amount of ratables remaining subject to taxation. A taxing district in such a county of the first class in which there has been located a State or county institution other than a park commission or lands owned or occupied by a park commission occupying in excess of four hundred acres of land, in the aggregate, shall have remitted or rebated by the county treasurer a sum equal to three-fourths of the county tax rate applied to the entire amount of ratables remaining subject to taxation. A taxing district in a county of the first class having less than eight hundred thousand population in which there has been located a State or county institution other than a park commission or lands owned or occupied by a park commission occupying in excess of two hundred acres of land, in the aggregate, shall have remitted or rebated by the county treasurer a sum equal to three-fourths of the county tax rate applied to the entire amount of ratables remaining subject to taxation."

STATEMENT OF THE CASE

The petitioners are a New Jersey municipal corporation — the Borough of Demarest — and three individual taxpayers residing in Bergen County, New Jersey. On November 20, 1981, the Tax Court of New Jersey sitting without a jury rendered an opinion and judgment declaring New Jersey statutes N.J.S.A. 54:4-5 and N.J.S.A. 54:4-5.2 unconstitutional (37a).[1] This opinion and judgment followed a lengthy trial during which the respondent, Township of Mahwah, attempted to prove its entitlement to a tax rebate pursuant to the terms of the so-called "Rebate Statute," N.J.S.A. 54.4-5.[2]

N.J.S.A. 54:4-5 provides that a municipality located in a *first-class county*[3] with a population in excess of *800,000* and which has within its borders *200 acres* or more of land used and occupied by a State or County institution is entitled to a rebate of *one-half* of the portion of the municipality's share of County taxes (italics added). Petitioners submit that each layer of classification as provided by the italicized terms creates an increasingly irrational scheme for the reallocation of tax dollars so as to deprive the petitioners of the equal protection of the laws.

There are seventy (70) taxing districts in Bergen County, New Jersey.[4] The cost of the Bergen County budget is annually

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1. "___a" refers to the Appendix annexed to this Petition for Writ of Certiorari.

2. This statute was repealed in its entirety on June 10, 1982 by Public Laws of 1982, Chapter 36 and replaced with legislation under which the Township of Mahwah does not qualify for a tax rebate.

3. N.J.S.A. 40A:6-1 provides that "First Class" counties are those counties having a population of more than 600,000. The statute classifies other counties by population *and* location into six classes depending upon the census count and whether geography has placed the county along the Atlantic Ocean.

4. There are 21 counties in New Jersey consisting of 567 municipalities.

apportioned among the 70 taxing districts in the county through the mechanism of a Table of Aggregates. Pursuant to this procedure, the Bergen County Board of Taxation is empowered to equalize the tax burden among the 70 constituent taxing districts and thereafter set for each municipality a tax rate so as to generate sufficient monies to cover that municipality's apportioned share of county taxes.

The Ramapo College campus (owned by the New Jersey Department of Higher Education) is located in the Township of Mahwah and contains approximately 357 acres consisting of its core of classroom buildings, dormitories, recreational and sports facilities, dense woods and open fields.

In addition to Ramapo College, the Bergen County Police and Fire Academy, consisting of 24.98 acres is located in the Township of Mahwah. Mahwah itself contains 25.7 square miles and 16,448 acres.

The Tax Court held that Mahwah had successfully proved that at least 200 acres or more of land were used and occupied by state and county institutions. Following this threshold determination, the Tax Court held (and the Appellate Division affirmed) that Mahwah, although qualifying under the Rebate Statute, was ineligible therefor because such statute constituted special legislation violative of the New Jersey Constitution.[5]

The parties raised both state and federal constitutional issues in this case as early as the pretrial order in November, 1979 (93a). Throughout these proceedings the issues of whether the Rebate Statute was special legislation under the New Jersey Constitution

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5. It is clear that the analysis of whether the statute constituted special legislation does not substantially differ from the analysis of non-invidious classifications under the Equal Protection Clauses of the United States Constitution. *See* 37a, 3 N.J. Tax, *supra* at p. 545.

and whether the Rebate Statute resulted in a violation of the Equal Protection Clause under the United States Constitution were considered as one isue and subjected to the same judicial analysis. Although the New Jersev courts gave lip service to the federal constitutional analysis, no court directly addressed the claim of a violation of the Fourteenth Amendment. All of the lower courts focused primarily upon the state constitutional issue and fine-tuned their analysis in light of New Jersey cases. Thus, although the New Jersey test and the federal test are substantially similar, the New Jersey Supreme Court did not directly address the federal constitutional issue, although requested to do so by the parties at all stages of the proceedings.

The proofs adduced in support of the claim of unconstitutionaiity generally revolved around whether there was any rational basis to reward only municipalities located in first-class counties with a population of over 800,000 persons and which have within their borders at least 200 acres of land used and occupied by public institutions.

The evidence before the Tax Court showed clearly and convincingly that there were a substantial number of municipalities located within New Jersey in *non-qualifying* counties which, nevertheless, were occupied by state or county institutions using in excess of 200 acres (143a). For example, in Sussex County, Rutgers, the State University, utilizes 565.9 acres in Wantage Township; in Ocean County, the Ocean County College occupies 576.0 acres in Dover Township; and in Mercer County the Trenton State College occupies 208.2 acres in Ewing Township.[6] None of *these* municipalities were entitled to the benefits of the Rebate Statute simply because they were not located in first-class counties with populations in excess of 800,000 persons. The list of other

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6. Sussex County is a third class county; Ocean County is a fifth class county; Mercer County is a second class county.

municipalities throughout New Jersey in which state or county institutions are located in excess of 200 acres is extensive (143a). Nevertheless, the Legislature discriminatingly chose to provide an unwarranted benefit to those municipalities in which such public institutions are located and which are fortuitous enough to have been incorporated in a first-class county with a population in excess of 800,000 persons.

Moreover, the evidence indicated that fifty percent (50%) of the county tax contribution of Mahwah for the years 1974 through 1979 of $3,807,877.97[7] would substantially outstrip the actual costs of associated with maintaining the state and county institutions within its borders. For example, from 1975 to 1979 of a total 43,667 fire, police and ambulance calls, the Ramapo College generated only 3.4% thereof. That Mahwah recovers a windfall profit from the Rebate Statute cannot be gainsaid.

REASONS FOR GRANTING THE WRIT

The decision below represents a classic example of a court twisting and stretching the limits of legal imagination in an attempt to support a rational explanation for a decidedly absurd statutory scheme. The Rebate Statute is deficient in two areas. First and foremost it arbitrarily classifies municipalities for substantial tax rebates on the basis of the fortuitousness of geography. By creating a multilayered filter to allow only a handful of municipalities to reap the benefit of a reallocation of public funds ignores both the original intention of the Legislature and will promote arbitrary classifications in the future.

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7. For the years 1974 through 1980, inclusive, the rebate flowing to Mahwah has been recalculated at $4,730,997.71. The amount due for the year 1981, if Mahwah successfully prosecutes its appeal, is $990,235.26. Thus, there is at least $5,721,232.90 in *public tax dollars* at stake here.

The second aspect of the Rebate Statute which violates equal protection concepts is the actual formula utilized for the redistribution of tax dollars. By selecting an arbitrary fifty percent (50%) of Mahwah's Bergen County tax as the amount of the rebate compounds the discrimination because this redistribution of tax dollars bears no justifiable relationship to the actual burdens of government experienced by Mahwah.

This Court has long expressed the concept that under our constitutional system the states may determine the reach and scope of particular legislation and need not provide "abstract symmetry." States may mark and set apart the classes and types of problems according to the needs as dictated or suggested by experience.

Nevertheless, the rigid arbitrary formula which provides the qualifications for a rebate is contrary to the constitutional theme of equality among citizens in the exercise of their rights. The idea that one group can be granted greater fiscal benefits than another merely because of its location in a first-class county with a population of over 800,000 is no different than the evil which was remedied by this Court in *Baker v. Carr,* 369 U.S. 186 (1962), and its progeny. While legislative reapprotionment cases and principles of voter equality may on the surface appear fundamentally different than the taxation issues implicated here, the difference to the individual citizen is indistinguishable. The emotional and legal interconnections between representation and taxation has been well-recognized from colonial times.

No one denies that a municipality in which is located a public institution ordinarily bears additional or different governmental burdens than other municipalities not called upon to support such facilities. For example, it would not be surprising to find in a municipality in which a public hospital is located a more highly developed transportation infrastructure than in a municipality

without such hospital. The Legislature can certainly decide to compensate or reward this municipality for bearing the burdens of such public institution located within its borders, and such classification would not necessarily transgress constitutional principles. States are generally accorded wide discretion in enacting schemes for funding local services. However, all such experiments must rise or fall upon whether they are arbitrary, capricious or unreasonable.

The rebate scheme under the Rebate Statute, by authorizing tax relief to the citizenry in specific political subdivisions based upon population levels, to the detriment of other citizens in similarly-situated political subdivisions is an arbitrary, unreasonable and inappropriate means by which to implement a purported statewide program of tax-supported economic development. Here, there is no rational connection made in the legislation for rewarding Mahwah or to compensate it for the additional governmental burdens borne by it. Rather, Mahwah is merely given a windfall by virtue of the luck of the census. Citizens of other municipalities around the State of New Jersey which support similar public institutions within their borders, simply because they are not located in counties of the first class having in excess of 800,000 persons look upon Mahwah and cannot understand why their situation is not identical. Those citizens do not receive the same largesse from the Legislature and the discrimination inherent in such a scheme is manifest.

The Legislature's only motivation in adopting the Rebate Statute in 1922 was to ameliorate a particular hardship of one municipality — Cedar Grove, Essex County, — in which was located the Overlook Hospital (a county psychiatric hospital) and associated facilities. At that time there was no 800,000 population threshold in the statute. The Rebate Statute was amended on several occasions. In 1928 it was amended to provide municipalities within counties of the first-class that have within their boundaries county or state institutions occupying more than 400 acres of land

would receive a rebate of ¾ of the municipality's share of county taxes. In 1932 the Legislature limited the definition of institutions to those institutions "other than park commission or lands owned or occupied by any park commission." In 1969 the Rebate Statute was amended to limit the rebate to municipalities located in counties of the first class with a population of over 800,000. As result of this amendment Hudson County, which was a first-class county but did not have a population over 800,000, was no longer a qualifying county. However, the 1970 Census revealed that Bergen County, a first-class county, had a population in excess of 800,000. Therefore, Bergen County and Essex County were the *only* counties qualifying under the statute.

With the specific purpose of the original Rebate Statute being to lessen the financial burden on Cedar Grove's citizens of having a county psychiatric hospital and a major portion of property within its borders devoted to public use, the statute has expanded willy-nilly to encompass counties and municipalities which were neither within its original ambit, nor were part of any rational or recognized scheme by the Legislature.

Petitioners are of course aware that where taxation is concerned and no specific federal right, apart from equal protection, is imperiled, states have a large leeway in making classifications and drawing lines which in their judgment produce reasonable systems of taxation. The exercise of a state's taxing power, however, is subject to the requirements of the Equal Protection Clause of the Fourteenth Amendment. It is recognized that the clause imposes no iron rule of equality, nor does it prohibit the flexibility and variety that are appropriate to reasonable schemes of state taxation. *See Allied Stores of Ohio v. Bowers,* 358 U.S. 522 (1958).

Here, however, we are faced with the spectacle of a Legislature which has set in motion a statutory scheme which thereafter acquires a life of its own akin to a chain reaction, and which

impacts upon the citizens of various counties and municipalities in ways which are wholly unintended and inconsistent. Courts should never condone irrational legislative classifications which set the citizens of large political subdivisions above those in small political subdivisions, or for that matter, persons located in urban areas above those located in rural areas. This, unfortunately, is the result of the Rebate Statute.

The New Jersey Supreme Court held that there was a rational basis to support the population classification of the Rebate Statute. It held:

> "We believe that it is conceivable, and based on common sense that it is likely, that an institution in a county with a larger population will be utilized by more people than a similar institution in a smaller county. In addition, a municipality will have demands placed on it in support of a State or County institution (e.g. police, fire, ambulance, maintenance of roads, sanitation) that would not exist in a municipality without such an institution. The expense of such demands can be more easily shared among residents in a larger county then by those in a smaller one. Simply stated, assuming two counties with equal county tax contributions — one a county with a population greater than 800,000 and one, a county with a population less than 800,000 — the burden on the individual taxpayers who indirectly pay the rebate to the host community would be less per capita in the larger county than in the smaller county. In short, it is conceivable that the greater the population in a county, the greater the number of people an institution in that county serves, and the greater the burden on the host community because of the greater demand for uncompensated services. While

> we might not agree that the population line should have been drawn where it has been, we submit that the determination is a legislative function subject to many considerations beyond the purview of this Court. We recognize that the burden on a host town in a small county might be just as great as that on a town in a large county, but that the size of the small county would preclude a tax rebate on the Statute. Nevertheless, we believe that, in adding the population requirement, the Legislature could rationally have presumed that an institution in a small county would be used less often and require fewer support services from the host city than would an institution in a large county. A further rationale for the Statute is the presumption that the per capita cost of the rebate to the rest of the county would be smaller in a large county. We hold that such presumptions are a rational basis upon which to sustain the statute." 98 N.J. at pp. 290-291 (29a).

The fallacy of this rationalization is that citizens in municipalities which are obligated to require the additional governmental burdens of public institutions and which are not fortuitous enough to be located in larger counties should not be disqualified merely because of local population conditions. Moreover, it is not necessarily true that a public institution will be utilized to a greater extent and require greater governmental services merely because it is located in a larger county. For example, the Township of Mahwah received entitlement to the rebate primarily because of the location within its borders of a *state* institution, Ramapo College. The other major beneficiary of the statute, Cedar Grove, located in Essex County, has within its borders a *county* hospital. The use of the county hospital in Cedar Grove primarily by county residents may certainly be presumed. However, there can be no presumptions that a *state*

institution will be utilized to a greater extent by local county residents. For example, merely because a state prison is located in a smaller county does not necessarily mean that it will be utilized by a smaller number of persons than if it were located in a larger county or even that a smaller number of *county* residents will use it. The census and vagaries of geography do not necessarily bespeak qualitative differences in utilization of facilities or the governmental burdens generated by them. It is because of this dichotomy between county institutions and state institutions that the Rebate Statute becomes even more discriminatory.

Petitioners recognize that this Court recently upheld a Kentucky statutory scheme permitting lay judges to preside in some cities while requiring law-trained judges in others, based upon a Kentucky constitutional provision classifying cities by population. *North v. Russell,* 427 U.S. 328 (1976). In that case the Court relied upon the rationale of the Kentucky Supreme Court which found a rational basis for favoring larger cities because of the greater volume of cases in larger cities, the fact that lawyers were more available to handle cases in the larger cities, and the greater financial resources of the larger cities to pay for law-trained judges.

North v. Russell, supra is distinguishable from the instant case. There is a fundamental distinction here between the causes of governmental expenses and the manner of paying for them. In *North v. Russell,* larger cities were singled-out for favorable treatment because they both *produced* the problem and *could support* the problem. In the instant case, however, the size of the county has absolutely nothing whatsoever to do with the increased burden placed upon the citizens of a given municipality because of a public institution within its borders. Indeed, if Ramapo College had been built a few miles to the west in, say, West Milford, New Jersey, located in Passaic County,[8] that

8. Passaic County is a second class county.

municipality would be unentitled to a rebate simply because Passaic County is not a first-class county with a population in excess of 800,000 persons. However, the governmental burdens would be the same as in Mahwah. Thus, there is no necessary nexus between burden and benefit which would support this particular New Jersey statutory scheme. Indeed, the contrary is true where we see genuinely needy municipalities in New Jersey which are not able to share in the reallocation.

In passing on the constitutionality of a state tax, the United States Supreme Court is concerned only with its practical operation, not its definition or the precise form of descriptive words which may be applied to it. Concern is with substance rather than form and the Court is required to determine the ultimate effect of a law as applied and enforced and to find the operating incidence of the tax. *American Oil Co. v. Neill,* 380 U.S. 451 (1965); *Detroit v. Murray Corp. of America,* 355 U.S. 489 (1955). In the instant case the substance of the statute is to arbitrarily screen worthy municipalities from relief without providing an adequate basis for making the classification and distinctions. The test to determine the validity of state statutes under the Equal Protection Clause has been variously expressed, but the United States Supreme Court requires, at a minimum, that a statutory classification bear some rational relationship to a legitimate state purpose. *See Weber v. Aetna Casualty and Surety Co.,* 460 U.S. 164 (1972).

Petitioners are well aware that a state tax law will not be held arbitrary although it discriminates in favor of a certain class, but only if the discrimination is founded upon a reasonable distinction or difference in state policy not in conflict with the federal constitution. *Lehnhausen v. Lakeshore Auto Parts Co.,* 410 U.S. 356 (1973). Petitioners recognize that this principle has weathered nearly a century of Supreme Court adjudication and would apply here as well. Moreover, petitioners are painfully aware

that legislatures have especially broad latitude in creating classifications and distinctions in tax statutes. *Regan v. Taxation with Representation of Washington*, ____ U.S. ____, 76 L. Ed. 2d 129, 103 S.Ct. ____ (1983); *Exxon Corp. v. Eagerton*, ____ U.S. ____, 76 L. Ed. 2d 497, 103 S.Ct. ____ (1983).

Nevertheless, this case is one of a different species of tax classification cases. It brings forth to the Court an invidious system of classifying municipalities (and the citizens thereunder) for the payment of governmental burdens located *outside* of their particular municipal boundaries. Moreover, none of the Rebate Statute's formulaic provisions are rationally related to the purpose of the legislation which is to spread the cost of services rendered to a public institution which serves constituencies outside the municipality in which it is located. By creating the brittle and purely arbitrary county-wide limitations and thereafter refining the qualifications for the rebate to only particular large counties robs similarly situated citizens of the benefit of the equal protection of the laws. In this case, that robbery will net over $4,700,000 dollars if this Court allows the present judgment of the New Jersey Supreme Court to stand.

CONCLUSION

Based upon the foregoing, petitioners respectfully urge that a writ of certorari issue to review the judgment and opinion of the New Jersey Supreme Court. To allow the Rebate Statute to remain viable is to neglect an equal protection concept that requires clarification and resolution. Petitioners are not merely asking this Court to correct an error *peculiar* to them, but rather, to articulate and remedy a problem of analysis applicable to all taxing entities in our federal system.

Respectfully submitted,

ANTHONY D. ANDORA
JONATHAN N. HARRIS

ANDORA, PALMISANO,
HARRIS & ROMANO
Attorneys for Petitioners

Dated: April 12, 1985

APPENDIX

OPINION OF SUPREME COURT OF NEW JERSEY FILED JANUARY 14, 1985; PUBLISHED AT 98 N.J. 268 (1985)

TOWNSHIP OF MAHWAH, JOANNE MAKELY, FRANK P. KRAUS AND NEILAN BOMAN, PLAINTIFFS-APPELLANTS AND CROSS-RESPONDENTS, v. BERGEN COUNTY BOARD OF TAXATION, CRESSKILL BOROUGH, CLOSTER BOROUGH, FORT LEE BOROUGH, DEMAREST BOROUGH, LITTLE FERRY BOROUGH, EUGENE P. BARDEN, ELIAS M. ELIASOF, CHARLES WARK, EDWARD W. JANSEN, AND NICHOLAS CORBISCELLO, DEFENDANTS-RESPONDENTS AND CROSS-APPELLANTS, AND FAIR LAWN BOROUGH, ALPINE BOROUGH, TETERBORO TOWNSHIP, ALLENDALE BOROUGH, HACKENSACK CITY, ENGLEWOOD CLIFFS BOROUGH, RIDGEFIELD PARK BOROUGH, LODI BOROUGH, CARLSTADT BOROUGH, AND FAIRVIEW BOROUGH, DEFENDANTS, AND TEANECK TOWNSHIP AND WERNER H. SCHMIDT, DEFENDANTS-RESPONDENTS.

Argued October 10, 1984-Decided January 14, 1985.

Brian T. Campion argued the cause for appellants and cross-respondents (*Breslin and Breslin*, attorneys; *E. Carter Corriston*, of counsel).

Anthony D. Andora argued the cause for respondents and cross-appellants Cresskill Borough, et al. (*Andora, Palmisamo, DeCotiis & Harris*, attorneys; *Anthony D. Andora* and *Jonathan N. Harris*, on the briefs).

Opinion of Supreme Court of New Jersey

Jacob Schneider argued the cause for respondents Township of Teaneck, et al. (*Schneider, Balt & Ciancia*, attorneys; *Peter D. Ciancia*, on the brief.

Harry Haushalter, Deputy Attorney General, argued the cause for respondent and cross-appellant Bergen County Board of Taxation (*Irwin I. Kimmelman*, Attorney General of New Jersey, attorney; *James J. Ciancia*, Assistant Attorney General, of counsel).

Joseph S. DiMaria submitted a letter in lieu of brief on behalf of *amicus curiae* Borough of Paramus.

Stuart R. Koenig submitted a letter in lieu of brief on behalf of *amicus curiae* Township of Cedar Grove (*Stickel & Koenig*, attorneys).

The opinion of the Court was delivered by

GARIBALDI, J.

Like the appeal in *Newark Superior Officers Association, et al. v. The City of Newark, et al., and State of New Jersey, Department of Civil Service, et al.*, 98 *N.J.* 212 (1984), which we are also deciding today, this case presents the question of whether a statute that relies on population for its classification is special legislation enacted in violation of N.J. Const. (1947), Art. IV, § VII, ¶ 9. The statute in issue is *N.J.S.A.* 54:4-5, *L.* 1922, *c.* 130 (rebate statute), which during the tax years 1974 to 1980 provided a rebate of a portion of a municipality's share of county taxes if the municipality were located in a first-class county with a population in excess of 800,000, and had within its borders

200 acres or more of land used and occupied by a state or county institution. In 1980, the Legislature supplemented this statute by the enactment of *N.J.S.A.* 54:4-52 (*L.* 1980, *c.* 1187), approved September 22, 1980, which foreclosed any municipality that had not received the rebate for any year prior to the effective date of this act from receiving the rebate for any prior or future tax year.

The trial court and the Appellate Division held both statutes to be unconstitutional special legislation.

I

The Township of Mahwah (Mahwah) is a municipality in Bergen County. For the tax years in issue, 1974 to 1980, Bergen and Essex Counties were the only first-class counties in the state with populations exceeding 800,000. In each of these years, Essex and Bergen Counties had the highest county budgets and the highest total general property taxes.

Located in Mahwah are Ramapo College owned by the State of New Jersey Department of Higher Education, which consists of approximately 370 acres, and the Bergen County Police and Fire Academy, a county facility consisting of approximately 26 acres.

For each of the years 1972 through 1979, Mahwah filed a petition with the Bergen County Board of Taxation (County Board) requesting a rebate of ½ of its county taxes pursuant to *N.J.S.A.* 54:4-5. For the year 1980 Mahwah filed a complaint directly with the Tax Court seeking payment of a rebate or alternatively a declaration of a tax-exempt status.

The County Board issued judgments for the years 1972 through 1979 denying the relief requested, Mahwah appealed these judgments to be State Division of Tax Appeals, which transferred the appeals to the Tax Court.

Prior to trial in the Tax Court, the court granted a motion made by the New Jersey Attorney-General on behalf of the County Board to dismiss the complaints for the years 1972 and 1973 as being filed out of time. In addition to Mahwah and the County Board, permission to intervene was granted to other taxing districts in Bergen County[1] as well as to several individual residents of Mahwah and the other Bergen County municipalities.

Permission was also granted to Cedar Grove to intervene as *amicus curiae*. Rebates under the rebate statute had been paid to Cedar Grove, located in Essex County, for the years 1923 through 1980, and to Secaucus, located in Hudson County, for the years 1943 through 1965.

There are seventy taxing districts in Bergen County. The cost of the Bergen County budget is annually apportioned among the seventy taxing districts in the County through the mechanism of the table of aggregates. *N.J.S.A.* 54:4-49 to -52. Pursuant to this procedure, the County Board, in annually detemining the tax rates under the Local Property Tax Law, *N.J.S.A.* 54:4-1 to -136, includes in each municipality tax levy sufficient monies to cover that municipality's apportioned share of county taxes. According to Dante Leodori, Tax Administrator of the Bergen County Board,

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1. Boroughs of Cresskill, Closter, Fort Lee, Demarest, Little Ferry, Fair Lawn, Teaneck Township, Alpine, Teterboro Township, Allendale, Englewood Cliffs, Ridgefield Park, Lodi, Carlstadt, Fairview and Hackensack.

if Mahwah were to receive the rebates it claims under the Rebate Statute for the tax years 1974 to 1980, it would be entitled to $3,807,877.97. This rebate would be credited against Mahwah's current and future years' apportioned share of county taxes. The granting of such a rebate would necessitate that the other sixty-nine municipalities in Bergen County proportionately assume the additional costs of the County budget resulting from the rebate. It is estimated that if all of Mahwah's rebates were granted, the additional tax burden to the other residents of Bergen County would be less than $1 per year per person.

In the tax years 1978 through 1980, Mahwah received from the State payments in lieu of taxes pursuant to *N.J.S.A.* 54:4-2.2a to -2.2k for having located within its borders Ramapo College, These payments totaled $73,777.77 and $75,670.28, for 1978 and 1979, respectively.

The Tax Court held both *N.J.S.A.* 54:4-5 and its supplement, *N.J.S.A.* 54:4-5.2, to be unconstitutional as special legislation. 3 *N.J. Tax* 513 (1981). Accordingly, all of Mahwah's claims were dismissed. In addition, the Tax Court held that for the years 1974 through 1977 Mahwah had established that 200 acres of its land were used and occupied by state and county institutions within the meaning of *N.J.S.A.* 54:4-5, but that as a result of the payments-in-lieu-of-taxes statute, *N.J.S.A.* 54:4-2,2(a), for the the years 1978 through 1980, Mahwah did not possess the necessary acreage to qualify under the rebate statute.

The judgment of the Tax Court was affirmed by the Appellate Division "for the reasons stated in the opinion of Judge Evers. 3 *N.J. Tax* 513 (1981). *See also Newark Superior Officers Ass'n*

v. Newark, 187 *N.J. Super.* 390 (App. Div. 1982)." *Township of Mahwah, et al. v. Bergen County Board of Taxation*, 190 *N.J. Super.* 84 (1983).

Mahwah appealed to this Court as of right pursuant to Rule 2:2-1(a)(1), challenging the Appellate Division judgment that *N.J.S.A.* 54:4-5 was special legislation and that Mahwah was not qualified for the rebate for the years 1978 through 1980 as a result of the application of *N.J.S.A.* 54:4-2.2a. The Attorney General, on behalf of the Board, filed a cross-appeal as of right pursuant to Rule 2:2-1(a)(1), challenging the Appellate Division's judgment that *N.J.S.A.* 54:4-5.2 was invalid. The Borough of Closter and the other intervening Bergen County taxing districts filed a petition for certification and a notice of cross-appeal with this Court seeking review of the holdings that *N.J.S.A.* 54:4-5.2 was invalid and that Mahwah met the acreage requirements of the statute for the tax years in question. We granted the petition for certification on May 16, 1984, 97 *N.J.* 595 (1984).

II

N.J.S.A. 54:4-5 in its original form became law in 1922 and provided a rebate of one-half of the county taxes to any taxing district in a county of the first class in which there was located a state or county institution occupying 200 or more acres of land.

The Act's purpose was clearly stated by the Legislature:

> This bill is proposed to correct an injustice to the Township of Cedar Grove, wherein the Overbrook

> Hospital is situated. The township is compelled to furnish tuition to the children of the various officials and attendants employed there, and is also compelled to record the vital statistics and to furnish protection to the inhabitants of said hospital, *without receiving a dollar in return.* [Statement 3, accompanying P.L. 1918, p. 8471; emphasis added]

Thus, the Legislature originally enacted *N.J.S.A.* 54:4-5 to prevent the inequity imposed upon Cedar Grove, which had to provide municipal services to Overbrook Hospital (which is the county psychiatric hospital and is now called Essex County Hospital Center) and its employees without receiving any corresponding tax benefit. As we have previously stated, the Legislature's purpose in passing the Act was "to compensate some municipalities for revenues they would otherwise receive if the property had not been exempt from taxation, a condition which arose by virtue of public ownership and use." *Bergen County v. Paramus,* 79 *N.J.* 302, 309 (1979).

N.J.S.A. 54:4-5 was amended on several occasions. First, by *L.* 1928, *c.* 176, ¶ 1, which provided that municipalities within counties of the first class that have within their boundaries county or state institutions occupying more than 400 acres of land would receive a rebate of three-fourths of the municipality's share of county taxes.

In *L.* 1932, *c.* 128 the Legislature limited the definition of institutions to those institutions "other than park commission, or lands owned or occupied by any park commission." No

sponsor's statement is available for this amendment. However, as indicated above, the purpose of the original bill was to provide relief for municipalities in counties that were burdened in various ways by the maintenance of county or state institutions within their boundaries. In contrast, the inclusion of a park commission or lands owned or occupied by any park commission would not constitute a similar burden on the host municipality. Whereas the existence of Overbrook Hospital in Cedar Grove required that Cedar Grove furnish municipal services (police, fire, etc.) as well as tuition to the children of the various officials and attendants employed there, *see Sponsor's Statement* to *L.* 1922, *c.* 130, *supra,* vacant land held by a park commission would not result in similar financial burdens to the municipality. Therefore, the Legislature's limitation of the definition of institutions furthers the original purpose of *N.J.S.A.* 54:4-5.

Accordingly, prior to February 21, 1969, the rebate statute applied to any county of the first class and provided tax relief to municipalities within such a county that met the statutory criteria. First class counties are defined as those counties that have a population in excess of 600,000. *N.J.S.A.* 40A:6-1.

In 1968 the statute was amended to limit the rebate to municipalities located in counties of the first class with a population over 800,000. *L.* 1968, *c.* 467. As a result of this amendment, Hudson County was no longer a qualifying county. However, the 1970 census revealed that Bergen County, a first class county, had a population in excess of 800,000. Therefore, Bergen and Essex were the only two counties qualifying under the statute.

During the tax years in issue, *N.J.S.A.* 54:4-5 provided that

> [a] taxing district in a county of the first class having in excess of 800,000 population in which there has been located a State or county institution other than a park commission or lands owned or occupied by a park commission occupying more than 200 acres and not in excess of 400 acres of land, in the aggregate, shall have remitted or rebated by the county treasurer a sum equal to ½ of the county tax rate applied to the entire amount of ratables remaining subject to taxation. A taxing district in such a county of the first class in which there has been located a State or county institution other than a park commission or lands owned or occupied by a park commission occupying in excess of 400 acres of land, in the aggregate, shall have remitted or rebated by the county treasurer a sum equal to ¾ of the county tax rate applied to the entire amount of ratables remaining subject to taxation.

N.J.S.A. 54:4-5 was amended again by the enactment of *N.J.S.A.* 54:4-5.1 (*L.* 1980, *c.* 24) to provide that only non-parkland properties could be considered in determining the required acreage. In 1980, nine municipalities in Essex County maintained parkland that exceeded 200 acres. Essex County, because of a change in the form of its government, directly took ownership of parkland, which had previously been owned by a park commission. Since the literal language of *N.J.S.A.* 54:4-5 disqualified only parkland owned by a park commission from satisfying the acreage standard, the Legislature amended the statute to resolve an ambiguity and preclude any parkland, regardless of the form of ownership, from constituting qualifying acreage

under the statute. *See L.* 1980, *c.* 24. As a result of this amendment, Cedar Grove became the only municipality in Essex County that met the criteria of the rebate statute.

In 1980, *N.J.S.A.* 54:4-5 was further supplemented by the enactment of *N.J.S.A.* 54:4-5.2 (*L.* 1980, *c.* 118):

> No taxing district which has not actually received a remission or rebate of county taxes pursuant to R.S. 54:4-5 for any full tax year occurring prior to the effective date of this act, shall receive a rebate or remission under that section for the current tax year or any other tax year whether occupying prior to or after the effective date of this act. Nothing contained in this act shall affect any remission or rebate of county taxes to be received pursuant to that section by any taxing district which actually received a remission or rebate for a full tax year occurring prior to the effective date of this act.

This supplement provided that a municipality, which had previously not been a recipient of the rebate, was no longer eligible for the rebate, while a municipality, which had previously qualified for the rebate, was not to be affected by this supplement as long as it continued to meet the qualifications of *N.J.S.A.* 54:4-5. Since no Bergen County municipality had received a rebate of county taxes, the enactment of *N.J.S.A.* 54:4-5.2 precluded Bergen County municipalities from qualifying for the rebate. The elimination of Secaucus by Hudson County's failure to meet the population requirement meant that Cedar Grove was the only municipality qualified to receive the rebate.

After the release of the Tax Court opinion in this case, the Legislature, in direct response to that decision, repealed both *N.J.S.A.* 54:4-5 and its supplement, *N.J.S.A.* 54:4-5.2. It substituted a general statute that applies to any taxing district and expresses the land size restriction in percentage rather than acreage terms. *L.* 1982, *c.* 36; *N.J.S.A.* 54:4-5a. As stated in the Senate County and Municipal Government Committee Statement to *N.J.S.A.* 54:4-5a.

> This legislation would not be confined to counties of any particular population size or class. However, the land area restrictions in the bill are such that only Cedar Grove in Essex county would qualify. Cedar Grove has been receiving a rebate of county taxes since 1923.

The statute phases out the rebate payments and terminates in its entirety in 1987.[2]

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2. Any taxing district in which there has been located a county institution, other than an educational institution or park lands, regardless of whether such lands are owned and occupied by a park commission or by any other department, division, agency or instrumentality of the county government, which occupies more than *200* acres, and which constitute at least *5%* of the total land area of the taxing district, shall have remitted or rebated by the county treasurer a sum equal to a percentage of the county tax rate applied to the entire amount of ratables remaining subject to taxation according to the following schedule:

1982	45%
1983	40%
1984	30%
1985	15%
1986	15%
1987 and thereafter	0%

[*L.* 1982, *c.* 36, § 1.]

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III

Before we reach the question of the constitutionality of the statute, we first address the issue of whether Mahwah has met the acreage requirements of the statute.

The Borough of Cresskill *et al.* in their petition for certification allege that for the tax years in issue Mahwah did not have 200 acres of property located within its borders that was "used and occupied" by State and county institutions within the meaning of *N.J.S.A.* 54:5-4.

In *Borough of Paramus v. Capello*, 66 *N.J.* 1, 4 (1974), we held that the word "occupy" as used in *N.J.S.A.* 54:4-5 "means something more than mere ownership of the land and connotes actual governmental use." In *Bergen County v. Paramus Borough, supra*, 79 *N.J.* at 308, we held that such use must be reflected in "a present intent to devote the property to a public use within a reasonable length of time."

After an exhaustive and extremely detailed analysis of the use of the Mahwah Township property for the years 1974 to 1979, particularly by Ramapo College, the Tax Court concluded that at least 200 acres of property located in Mahwah were "used and occupied" during those years by state and county institutions within the meaning of *N.J.S.A.* 54:4-5. The Appellate Division affirmed.

We hold that the record below supports the lower court's holding that Mahwah satisfied the acreage requirement of the statute for the years 1974 through 1979. However, the Tax Court held that Mahwah did not have the requisite acreage for the years

1978 through 1980 because of the application of *N.J.S.A.* 54:4-2.2a to -2.2k. Specifically, the Tax Court held that

> [T]he clear language of this provision [*N.J.S.A.* 54:4-2.2b] indicated that the sole relief accorded to municipalities burdened with state property within its borders is payment in lieu of taxation pursuant to *N.J.S.A.* 54:4-2.2a *et seq.* Accordingly, defendant's motion is granted with respect to the years 1978, 1979 and 1980 and Mahwah's claims will accordingly be dismissed. [3 *N.J. Tax* at 526]

The Appellate Division affirmed this holding, which we now reverse.

[1] The predecessor of *N.J.S.A.* 54:4-2.2a to -2.2k, the payments in lieu of Taxation Act *L.* 1977, *c.* 272, was *N.J.S.A.* 54:4-2.1 and its companion statute *N.J.S.A.* 54:4-2.2. These two latter statutes first appeared as the law of this state in 1935. By 1935, the rebate statute under consideration herein had already been in effect for thirteen years. The Legislature is presumed to have been aware of existing legislation at the time it adopted *N.J.S.A.* 54:4-2.2a. *See Jacobs v. N.J. State Highway Authority*, 54 *N.J.* 393 (1969).

The 1935 in-lieu payments statute provided for payment of taxes by the State on State-owned properties. County-owned property was never included in the original statute, nor is it considered in the current version found at *N.J.S.A.* 54:4-2.2a. The changes made from the time of the original statute until it achieved its current form do not in any way affect the legislative determination in 1935 that the in lieu payments statute, requiring

payments in-lieu of taxes from the State treasury, was to co-exist with the rebate act that had been enacted in 1922, requiring rebates of county taxes to be paid to the municipality by the county treasurer.

[2] The Tax Court erred in its determination that state-owned property cannot be considered in the calculation under *N.J.S.A.* 54:4-5 for a county tax rebate. The court relied on *N.J.S.A.* 54:4-2.2b, which provides:

> Notwithstanding the provisions of any other law and to compensate municipalities for the impact upon local government cost of local services to state property, such property shall be assessed and subject to an in lieu tax payment provided in this act.

This provision clearly indicates that the in-lieu payments statute and the rebate statute can co-exist. This provision does not indicate that state property is excluded from the county tax rebate calculation. Rather, as stated in the statute, the in-lieu payments are to be made "[n]otwithstanding the provisions of any other law. . . ." There is nothing in this language to support the conclusion of the Tax Court.

Clearly the law does not contain an express repealer of the rebate act. In fact, the rebate act was amended by the Legislature on two occasions subsequent to the adoption of the current in lieu payments statutes. *See L.* 1980, *c.* 24; *L.* 1980, *c.* 118.

[3] Nor are any of the indicia of an implied repealer present. *See In re Application of Saddle River*, 71 *N.J.* 14, 27 (1976); 1A *Sutherland, Statutes and Statutory Construction*, § 23.11 at 235

(4th ed. 1972). A repeal by implication requires clear and compelling evidence of the legislative intent, and such intent must be free from reasonable doubt. *State v. Des Marets*, 92 *N.J.* 62, 93 (1983) (Handler, J., dissenting in part and concurring in part); *State v. Reed*, 34 *N.J.* 554, 561 (1961); *Swede v. Clifton*, 22 *N.J.* 303, 317 (1956).

[4] Every reasonable construction should be applied to avoid a finding of implied repealer. *State v. Stratis Commercial Corporation*, 165 *N.J. Super.* 158, 161 (App. Div. 1979). There is a strong presumption in the law against implied repealers. *Brewer v. Porch*, 53 *N.J.* 167, 173 (1969). That the in-lieu payments statute does not contain an express repealer of the rebate statute, that the rebate statute has been amended by the Legislature twice since the in-lieu payments act became effective, and that the state property provisions were never omitted from the rebate act by the Legislature, all evidence the Legislature's intention that the two statutes should co-exist.

Furthermore, the two statutes have different definitions of state property. *N.J.S.A.* 54:2-2a, the in lieu payments act, defines "State property" as follows:

> "State property" means land and improvements owned by the State and includes but shall not be limited to State offices, hospitals, institutions, schools, colleges, universities, garages, inspection stations, warehouses, barracks and armories together with abutting vacant land held for future development for the same purposes. State property shall not include that used or held for future use for highway, bridge or tunnel purposes or property which is qualified under State law for any other

> State payment in lieu of taxes. [*L.* 1977, *c.* 272, § 1]

In contrast, *N.J.S.A.* 54:4-5, the rebate act, applies to "a State or county institution other than a park commission or lands owned or occupied by a park commission occupying more than 200 acres. . . ." This latter definition includes a requirement of state ownership and occupancy, whereas there is no occupancy requirement under the in-lieu payments act. *Rutgers v. Piscataway Tp.*, 1 *N.J. Tax* 164, 169 (1980). Dealing as they do, therefore, with two separate classes of state-owned property, the statutes can co-exist.

We conclude therefore that *N.J.S.A.* 54:4-2.2a, the in-lieu payments act, and *N.J.S.A.* 54:4-5, the rebate act, co-exist as independent expressions of the intent of the Legislature and payments made under *N.J.S.A.* 54:4-2.2a will not be found to preclude a rebate under 54:4-5. Accordingly, we hold that Mahwah had the requisite acreage for the years 1978 through 1980 to qualify under *N.J.S.A.* 54:4-5.

IV

Article IV, § VII, ¶ 9 of the New Jersey Constitution provides:

> 9. The Legislature shall not pass any private, special or local laws.

The Constitution permits special laws under certain conditions and restrictions, none of which are satisfied here. *See* Art. IV, § VII, ¶ 7; Art. IV, § VII, ¶ 8; Art. IV, § VII, ¶ 10.

In *Newark Superior Officers Ass'n, et al. v. The City of Newark, et al.* and *State of New Jersey, Dep't of Civil Service, et al.*, 98 *N.J.* 212 (1984), which we also decide today, we set forth the principles applicable to determining whether a statute is unconstitutional as special legislation. *Id.* at 222-223. First, we affirmed the principle that a statute is presumed to be constitutional and it will not be declared void unless the statute is clearly repugnant to the Constitution. *Paul Kimball Hosp. v. Brick Township,* 86 *N.J.* 429, 446-47 (1981); *Brunetti v. New Milford,* 68 *N.J.* 576, 599 (1975); *Harvey v. Essex County Bd. of Freeholders,* 30 *N.J.* 381, 388 (1959).

Although courts always recognize a strong presumption of constitutionality, we stated in *In re Loch Arbour,* 25 *N.J.* 258 (1957), that where, as here, a statute has been in effect for several years,

> [a]*dded force is given to these basic concepts by the further policy of our law not to invalidate a statute which has been in force without a substantial challenge for many years,* unless its unconstitutionality is obvious. *Brown's Estate v. Town of Union,* 62 *N.J.L.* 142 (Sup.Ct.1898); *O'Banner v. Pendlebury,* 107 *N.J.L.* 245, 247 (E. & A. 1931); *Gibraltar Factors Corp. v. Slapo,* 23 *N.J.* 459, 463 (1957). [*Id.* at 264-265; emphasis added].

Unlike the statute in issue in *Newark, supra,* which was enacted in 1979, *N.J.S.A.* 54:4-5 has been the law since 1922. For over sixty years Cedar Grove has received rebates under the statute, as did Secaucus, located in Hudson County, for the years 1943 to 1965. During that period of time, the Legislature

continually reviewed and examined the statute, amending it numerous times from 1928 to 1980, so that it would conform to its original purpose. The length of time *N.J.S.A.* 54:4-5 has been in effect reinforces and buttresses the general presumption of constitutionality that attends every statute. *Vornado Inc. v. Hyland,* 77 *N.J.* 347, 352 (1978).

The second principle enunciated in *Newark* as to whether a statute is unconstitutional special legislation is that the burden is on the party challenging the constitutionality of the statute to demonstrate clearly that it violates a constitutional provision. *Piscataway Township Bd. of Educ. v. Caffierre,* 86 *N.J.* 308, 318 (1981); *Jamouneau v. Horner,* 16 *N.J.* 500, 515 (1954); *In re Freygang,* 46 *N.J. Super.* 14 (App. Div.), aff'd, 25 *N.J.* 357 (1957).

The third principle, one that we have long held, is that in deciding whether an act is special or general legislation, the determining factor is what is excluded, not what is included. *Budd v. Hancock,* 6 *N.J.L.* 133 (Sup. Ct. 1901). These principles have been restated numerous times by this Court, most recently in *Kimball Hosp. v. Brick Township Hosp., supra,* 86 *N.J.* at 446.

In *Newark,* we also applied the three part test that we set forth in *Vreeland v. Byrne,* 72 *N.J.* 292 (1977), to determine whether legislation constitutes special legislation. Under that test, we first consider the purpose and object of the legislation. We next apply it to the factual situation to determine whether any one thing is excluded that should be included. Lastly, we determine whether, as so applied, the resulting classification can be said to rest upon any rational or reasonable basis relevant to the purpose and object of the act. *Id.* at 300-01.

V

We now apply the *Vreeland* test to the statute presented here prior to its supplement in 1980.

N.J.S.A. 54:4-5 reflects a legislative determination that municipalities in first class counties that maintain a state or county institution occupying more than 200 or more than 400 acres are to receive a rebate of, respectively, ½ or ¾ of the county taxes. The specific purpose of the original rebate statute was to lessen the burden on Cedar Grove of having a county psychiatric hospital on a major portion of property within its border. More generally, by providing for the rebate of county taxes, the statute creates two effects: first, it provides a means of affording tax relief to a municipality that is burdened by the presence of a state or county institution within its borders that uses and occupies more than 200 or more than 400 acres and is exempt under the local property tax; second, it requires that the other municipalities within the county share the financial burdens for a state or county institution that serves the entire county.

By enacting the statute, the Legislature recognized the inevitable fiscal burdens that befall a municipality that supports a state or county institution within its borders that uses and occupies the requisite acres but is not subject to real property taxation. The Legislature determined that the other municipalities in the county should share part of the expenses for maintaining such an institution by proportionately picking up the costs of the rebate of the county taxes. In *Meadowlands Regional Development Agency v. State*, 63 *N.J.* 35, *cert. den.*, 414 *U.S.* 991, 94 *S. Ct.* 343, 38 *L. Ed.* 2d 230 (1973), we affirmed a legislative plan for development of the Meadowlands in accordance with a plan requiring intermunicipal sharing of the tax burdens. We thereby

affirmed the propriety of legislation requiring the sharing of costs among constituent municipalities within a county. *See also Bonnet v. State,* 155 *N.J. Super.* 520, 529 (App. Div.), aff'd o.b., 78 *N.J.* 325 (1978), (holding that New Jersey's system of financing welfare and the judiciary through costs imposed upon the counties and met through the local property taxes raised by each constituent municipality was constitutional).

Next, in applying the *Vreeland* test, we determine whether any municipality is excluded that should be included. The Act is applicable only to municipalities in first class counties that have a population in excess of 800,000. Essex and Bergen are the only first class counties that have a population in excess of 800,000. In addition to having the largest county populations in New Jersey, Essex and Bergen also have the largest county budgets and the highest total general property taxes.

Although the Act is applicable only to Essex and Bergen Counties, no other similarly-situated county is excluded. There is no other county in this state that currently meets the population requirement of the Act. When the statute was amended in 1968, only Essex County met its requirements. Bergen County, however, became eligible after the 1970 census disclosed that its population had increased to more than 800,000. The populations of other counties in the state may similarly increase to more than the 800,000 required by the statute.

[5] Moreover, if the classification is otherwise valid, it is not rendered invalid by the fact that it applies to only one city in the state. *Kimball, supra,* 86 *N.J.* at 448. We have held that a statute is not unconstitutional special legislation merely because it addresses the needs of a particular municipality or serves a particular legislative purpose. *McKenny v. Byrne,* 82 *N.J.* 304 (1980); *In re Loch Arbour, supra,* 25 *N.J.* 258.

Accordingly, the Legislature's motivation in adopting the rebate act in 1922 to ameliorate the particular hardship of Cedar Grove (*see Paramus v. Bergen County,* 2 *N.J. Tax* 515 (1981)) is not determinative of the constitutionality of the statute when, both on its face, and as revealed by the history of its subsequent effect, other municipalities could, and from time to time have, come within its scope.

The final inquiry under the *Vreeland* test is whether the Act rests on a rational basis justifying the classification. We have held that "[t]he test of whether a law constitutes special legislation is essentially the same as that which determines whether it affords equal protection of the laws." *Robson v. Rodriguez,* 26 *N.J.* 517, 528 (1958); *see also Harvey v. Essex County Board of Freeholders, supra,* 30 *N.J.* at 394.

In *McKenney v. Byrne, supra,* 82 *N.J.* at 314-16, we held that in searching for a conceivable rational basis for the enactment of legislation, the court is not limited to the stated purpose of the legislation, but should seek *any* conceivable rational basis. As we stated:

> Although the Legislature may have stated only one purpose, this does not foreclose the possibility that it had in mind other related reasons for its action. . . . Under such circumstances we should not ignore alternative rationales. "It is enough that there is an evil at hand for correction, and that it might be thought that the particular legislative measure was a rational way to correct it." *Williamson v. Lee Optical of Oklahoma, Inc.,* 348 *U.S.* 483, 488, 75 *S. Ct.* 461, 464, 99 *L. Ed.* 563, 572 (1955). [*Id.* 82 *N.J.* at 318].

In *Vornado Inc. v. Hyland, supra,* 77 *N.J.* 347, we again emphasized that

> [t]he Legislature is presumed to have a valid classification in mind. Distinctions will be presumed to rest upon a rational basis if there be *any conceivable state of facts* which would afford reasonable support for them. [*Id.* at 352].

As was true of the statute under consideration in *Newark Superior Officers, supra,* the statute being considered herein is challenged as being unconstitutional because it creates a classification based on population. In *Newark,* the classification involved a city; here, it is a county. But the principles applicable to determining whether a statute based on population classification can be supported by any conceivable statement of facts are the same. In *Newark Superior Officers,* we held that a classification based on population does not automatically render a law unconstitutional special legislation. Moreover, in that opinion we cited examples to demonstrate that the nexus between accountability and population has been frequently recognized by the Legislature and upheld by New Jersey courts.

Examples of legislation involving classifications based upon populations of municipalities or counties are as follows: *N.J.S.A.* 43:10-7 allows counties of the first class to impose in their tax levy taxes sufficient to meet the requirements of the employees' pension fund; *N.J.S.A.* 30:9-24 allows counties of the first class to establish maternity hospitals, issue bonds, and tax for the payment of those bonds; *N.J.S.A.* 40:22-14 allows first class counties to tax for the payment of salaries of county police for the regulation of traffic; *N.J.S.A.* 40A:9-117.2 relates to the appointment of uncompensated deputy sheriffs in counties having populations greater than 900,000; *N.J.S.A.* 40A:9-117.5 provides

for chief warrant officers in first class counties with populations in excess of 600,000 but less than 700,000; *N.J.S.A.* 51:1-43 requires appointment of a superintendent of weights and measures in municipalities of 60,000 or over. Accordingly, under the law of the State of New Jersey population is generally accepted as a means of classification.

[6] One of the most frequent arguments proffered when alleging that a statute whose classification is based on population is special legislation is that other municipalities that differ slightly in population should have been included. It is always arguable that a different line should have been drawn. However, to establish the unconstitutionality of a statute, it is not sufficient merely to prove a similarity among municipalities included in a statutory classification and those municipalities just above or just below the line that the Legislature has drawn. Thus, a court will not strike down an act on the ground that there is nothing to distinguish municipalities or counties slightly above or slightly below the population classification in issue.

We addressed this exact issue in *Bucino v. Malone,* 12 *N.J.* 330 (1953). There the question was the statutory distinction between municipalities with populations of 7,000 or less and those of greater population with respect to the time period during which municipalities adopting a new form of government under the Faulkner Act would be precluded from again voting on a change of government. The period of preclusion was fixed at three years for municipalities with populations of 7,000 or less, and five years as to all others. The plaintiff attacked the classification as arbitrary and therefore unconstitutionally special, having no reasonable relationship "to the necessities and proprieties of various kinds

of municipal government." We sustained the validity of the statute, stating:

> The Legislature has determined that as far as this freeze period is concerned a distinction should be made between the municipalities with less than 7,000 inhabitants and those with an excess thereof. Plaintiffs have not convinced us that this distinction is arbitrary and without reasonable basis. A larger municipality needs a longer test period in which to study the operation and effect of its new plan. The problems of city government are naturally more complex than those of the smaller community, and it may be unwise to condemn a plan of government before it has been in effect for this longer period of time. Also there is necessarily a great amount of confusion attendant upon a change of government in the larger municipality. Such disorder should be kept at a minimum by requiring longer periods of time between changes of government. The classification is valid. [*Id.* at 347-48].

Although it is arguable that a 7,000 population figure was too low to constitute a reasonable benchmark for distinction between "larger" municipalities and "smaller" ones for purposes of fixing a "freeze," we did not quibble over figures in light of the Legislature's express selection of a figure.

In *McCarthy v. Queen*, 76 *N.J.L.* 144 (Sup. Ct. 1908), the court again sustained a distinction between cities of the first class

and all others. The statute in question required that, in first class cities, the term of office of all city officers should expire with the term of the mayor who appointed them, and that their successors should be appointed by the incoming mayor. In holding the act not to be special, the court pointed out the tendency in modern legislation concerning the government of populous cities to place the power of appointment "in a single centre," and that there are many valid reasons therefor, principally that the mayor is elected by all the people and is held largely responsible for the policy of government. *Id.* at 149. The court concluded that the intent of the act was that in large cities the governing officials should be in accord with the chief executive. *Id.*

Under consideration in *Dickinson v. Freeholders of Hudson,* 71 *N.J.L.* 159 (Sup. Ct. 1904), aff'd, 71 *N.J.L.* 589 (E. & A. 1905), was a statute providing for financing and construction of a new courthouse, applicable only to counties of the first class. The court held the classification valid, stating:

> [I]n the act now under review, there is perceptible a reasonable relation of population to the subject matter. It would seem that in counties of the first class, having so large a population, where the demands for the accommodation of the courts and county officers are vastly greater than in other counties of the state, legislation might be justified requiring greater detail and providing greater safeguards than might be deemed requisite in the smaller counties. [71 *N.J.L.* at 163-64].

In *Owens v. Fury,* 55 *N.J.L.* 1 (Sup. Ct. 1892), the court reviewed a statute which provided that in cities with populations

between 50,000 and 100,000 the greater part of the appointive power of common councils should be transferred to the mayor of the municipality. The population classification was attacked as rendering the statute unconstitutional special legislation. In holding the act valid, the court stated:

> Almost all offices affecting the interests of a great number of persons are of a highly important character, while those that touch the affairs only of a few persons are usually insignificant. It seems undeniable that the clerkship of a large city is of much greater public concern than the clerkship of a small one. If, then, the importance of the office is to be measured by the largeness of the population in which it operates, it would seem to follow, as a direct consequence, that the method of filing such office has the same affiliation with population. . . . Where such [appointive] power shall reside in our municipal constitutions is, therefore, a subject for legislative determination, depending on the magnitude of the given office, and which magnitude, as we have seen, is to be tested by population. A classification by population, in this respect, is consequently, entirely proper. [*Id.* at 2-3].

In *Owens*, the court made no effort to justify the exclusion of cities above 100,000 in population. The court sustained the legislative classification, focusing its viewpoint merely upon the distinction between cities of 50,000 to 100,000 population as contrasted with those under 50,000. *See also, Freeholders of Hudson v. Clarke*, 65 *N.J.L.* 271 (E. & A. 1900); *McDonald v. Board of Freeholders*, 99 *N.J.L.* 393 (E. & A. 1924).

We emphasize that in population classification cases, legislative bodies may undertake the progressive resolution of problems dealing first with those aspects that are most pressing. In *N.J. Restaurant Ass'n v. Holderman*, 24 *N.J.* 295 (1957), we stated that it is not enough for a person alleging that a statute is special legislation

> to demonstrate that the legislative objective might be more fully achieved by another, more expansive classification, for the Legislature may recognize degrees of harm and hit the evil where it is most felt. [Citations omitted.] The Legislature may thus limit its action upon a decision to proceed cautiously, step by step, or because of practical exigencies, including administrative convenience and expense, . . . or because of "some substantial consideration of public policy or convenience or the service of the general welfare." *De Monaco v. Renton*, 18 *N.J.* 352, 360 (1955). Hence it may "stop short of those cases in which the harm to the few concerned is thought less important than the harm to the public that would ensue if the rule laid down were made mathematically exact." *Dominion Hotel, Inc. v. State of Arizona, supra* (249 *U.S.* [265] at page 268, 39 *S. Ct.* [273] at page 274 [63 *L. Ed.* 597]) [24 *N.J.* at 300-01].

See also Two Guys from Harrison Inc. v. Furman, 32 *N.J.* 199 (1960), in which Chief Justice Weintraub stated:

> The reason why a Legislature may strike at an evil where it finds it *without first surveying the entire scene in which it may exist even in equal*

> *degree* is an inescapable concession to the practicalities of a complex social and economic order. The legislative process would be hamstrung if the Legislature had to explore every nook and corner before it acted. [*Id.* at 219; emphasis added].

See also Piscataway Tp. Bd. of Ed., supra, 86 *N.J.* 308, where this Court held, "A state may undertake resolution of problems one step at a time, addressing itself to the part of the problems that seems most acute. *Williamson v. Lee Optical of Oklahoma,* 348 *U.S.* 483, 489, 75 *S. Ct.* 461, 465, 99 *L. Ed.* 563, 573 (1955)." *Id.* 86 *N.J.* at 324.

VI

As we stated in *Newark, supra,* 98 *N.J.* at 227

> Ultimately, the generality or speciality of a statute becomes a question of reasonableness. There is no general rule to distinguish a reasonable from an unreasonable classification, the question being a practical one varying with the facts in each case. As stated previously, where the question of reasonableness is fairly debatable, courts will uphold the classification. The burden of showing that the classification is not reasonable is upon the party attacking the statute. If we can conceive of any reason to justify the classification, the statute will be upheld.

[7] Our analysis here discloses that there is a rational basis to support the population classification of the rebate act. There is a conceivable set of facts that supports the legislation at issue.

We believe that it is conceivable, and based on common sense that it is likely, that an institution in a county with a larger population will be utilized by more people than a similar institution in a smaller county. In addition, a municipality will have demands placed on it in support of a state or county institution (e g. police, fire, ambulance, maintenance of roads, sanitation) that would not exist in a municipality without such an institution. The expense of such demands can be more easily shared among residents in a larger county than by those in a smaller one. Simply stated, assuming two counties with equal county tax contributions—one, a county with a population greater than 800,000 and one, a county with a population less than 800,000—the burden on individual taxpayers who indirectly pay the rebate to the host community would be less per capita in the larger county than in the smaller county.

In short, it is conceivable that the greater the population in a county, the greater the number of people an institution in that county serves, and the greater the burden on the host community because of the greater demand for uncompensated services. While we might not agree that the population line should have been drawn where it has been, we submit that that determination is a legislative function subject to many considerations beyond the purview of this Court.

We recognize that the burden on a host town in a small county might be just as great as that on a town in a large county, but that the size of the small county would preclude a tax rebate under the statute. Nevertheless, we believe that, in adding the population requirement, the Legislature could rationally have presumed that an institution in a small county would be used less often and require fewer support services from the host city than would an institution in a large county. A further rationale for the statute is the

presumption that the per capita cost of the rebate to the rest of the county would be smaller in a large county. We hold that such presumptions are a rational basis upon which to sustain the statute.

In conclusion, we affirm the statute's strong presumption of validity, a presumption that is strengthened by the fact that it was enacted sixty years ago and has been reviewed and amended by the Legislature frequently during that period of time.

Second, we emphasize that population is a valid classification. Courts should not quibble by making comparisons to subjects slightly below or above the dividing line chosen by the Legislature.

Third, the possibility that some municipalities in the excluded category might merit the benefits of the act as much as or more than some of the municipalities in the included category is not determinative. That possibility is inherent in the nature of any legislative classification. If by and large, and characteristically, the subject matter within the excluded category has any rational relationship to a proper statutory objective or purpose for exclusion, the courts must sustain the classification.

Fourth, as we previously stated, there is an obvious rationale for the classification based on population. The Legislature could reasonably have assumed that counties with populations of 800,000 or over would have a greater density and intensity of use of the same area of land than counties of lesser population. The resultant burden upon the host community could have reasonably and rationally been the basis of the population classification created.

Further, it is conceivable that a major policy consideration in the formulation of this classification could have rested in the legislative contemplation of the substantially higher burden of

contribution to rebates for taxpayers in smaller counties than in larger ones. In other words, rebates of equivalent dollar amounts would have to be made up by assessment of taxpayers generally throughout the county, and the proportionate financial burden of such contribution would be relatively larger on taxpayers in smaller counties than in larger counties because, as the Legislature could reasonably have assumed, the aggregate of taxable ratables in larger counties is generally greater than in smaller counties.

Accordingly, we conclude that *N.J.S.A.* 54:4-5 is not special legislation. Hence, it is constitutional and we reverse the judgment of the Appellate Division in this regard.

VII

[8] Effective September 22, 1980, *N.J.S.A.* 54:4-5 was supplemented by the enactment of *N.J.S.A.* 54:4-5.2 (*L.* 1980, *c.* 118), which provides:

> No taxing district which has not actually received a remission or rebate of county taxes pursuant to R.S. 54:4-5 for any full tax year occurring prior to the effective date of this act, shall receive a rebate or remission under that section for the current tax year or any other tax year whether occurring prior to or after the effective date of this act. Nothing contained in this act shall affect any remission or rebate of county taxes to be received pursuant to that section by any taxing district which actually received a remission or rebate for a full tax year occurring prior to the effective date of this act.

This "grandfather clause" limited the application of *N.J.S.A.* 54:4-5 to municipalities that had received a rebate under that act prior to the effective date of *N.J.S.A.* 54:4-5.2. Since no Bergen County municipality had received a rebate of county taxes, the enactment of *N.J.S.A.* 54:4-5.2 prevented Bergen County municipalities from ever qualifying for the rebate, and left Cedar Grove as the only municipality to ever qualify for the rebate. *See supra* at 277.

In *Paul Kimball Hosp. v. Brick Township Hosp.*, 86 *N.J.* 429 (1981), we held:

> Grandfather clauses reflect the legislative policy that the new regulatory process shall be effective prospectively. Since that legislative policy may have a conceivably rational basis, grandfather exclusions are not invidious per se and violative of equal protection. See *Affiliated Distillers Brands Corp. v. Sills*, 56 *N.J.* 251 (1970), mod. on other grounds 60 *N.J.* 342 (1972). The question from an equal protection viewpoint is whether there is a justifiable basis for the discrimination. A classification will not be set aside if any state of facts reasonably may be conceived to justify it. *McGowan v. Maryland*, 366 *U.S.* 420, 81 *S. Ct.* 1101, 6 *L. Ed. 2d* 393 (1961). If there is a conceivable legitimate purpose for the grandfathering, the legislative action will be upheld. [*Id.* at 441].

Applying this standard, we find it difficult to conceive a rational basis for excluding other municipalities that may satisfy the requirements of *N.J.S.A.* 54:4-5 at any time after September 22, 1980, the effective date of *N.J.S.A.* 54:4-5.2. *See Fagan v. Payne*, 75 *N.J.L.* 851 (E. & A. 1907); *Seymour v. Orange*, 74

N.J.L. 549 (E. & A. 1906). The reasoning that supports the constitutionality of *N.J.S.A.* 54:4-5 prior to the amendment that precludes its application to other municipalities, *see supra* Parts IV, V, VI, would apply as well to municipalities that in the future satisfy the requirements of the rebate act. Accordingly, we find *N.J.S.A.* 54:4-5.2, the supplement to *N.J.S.A.* 54:4-5, to constitute special legislation in violation of the New Jersey Constitution. *See also Newark Superior Officers, supra,* 98 *N.J.* at 231.

We hold, however, that the grandfather clause may be severed from the statute and the remaining valid parts sustained. As noted by Judge Evers, *Mahwah Tp., supra* 97 *N.J.* at 551, the rule of severability was succinctly set forth in *Affiliated Distillers Brands Corp. v. Sills,* 60 *N.J.* 342 (1972). In that case we analyzed the issue of when a clause or amendment to a statute can be severed without destroying the validity of the remaining statute.

> Severability is a question of legislative intent. *Angermeier v. Borough of Sea Girt,* 27 *N.J.* 298, 311 (1958). The governing principle is whether it can be fairly concluded that the Legislature designed the statute to stand or fall as a unitary whole. In reaching this conclusion, we must determine whether the objectionable feature can be excised without substantial impairment of the principle object of the statute. *N.J. Chapt., Am. I.P. v. N.J. State Bd. of Prof. Planners,* 48 *N.J.* 581, 593 (1967). An entire statute will not be invalidated when one clause is found to be unconstitutional unless that clause is so intimately interconnected with the whole that it can be reasonably said that the Legislature would not have enacted the statute without the offending clause. [*Id.* 56 *N.J.* at 265.]

We reiterated this principle in *Inganamort v. Borough of Fort Lee*, 72 *N.J.* 412 (1977):

> It is a question of interpretation and of legislative intent whether the particular provision is so interwoven with the invalid clauses as that it cannot stand alone. . . . Courts will enforce severability where the invalid portion is independent and the remaining portion forms a complete act within itself. [*Id.* at 422-423.]

See also Newark, supra, 98 *N.J.* at 231.

We find that without the grandfather clause the statute is complete within itself. The severance of the amendment from the statute will not harm the objective or purpose of the statute, that is, that municipalities be compensated in part for the expense of hosting a county or state institution, expenses that they would have recovered if the property in question were not exempt from taxation. We agree with Judge Evers' finding that the supplement cannot be construed as a substantive alteration of the rebate statute; rather, that it is, indeed, supplementary in the truest sense of that word. *Mahwah Tp., supra*, 3 *N.J. Tax* at 552. Accordingly, we hold that the supplement, *N.J.S.A.* 54:4-5.2, can be severed from *N.J.S.A.* 54:4-5, which statute remains valid.

The judgment below is affirmed in part and reversed in part.

For affirmance in part, reversal in part — Chief Justice WILENTZ and Justices CLIFFORD, SCHREIBER, HANDLER, POLLOCK and GARIBALDI—6.

Opposed—None.

OPINION OF SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION FILED JUNE 20, 1983; PUBLISHED AT 190 N.J. SUPER. 84 (APP. DIV. 1983)

TOWNSHIP OF MAHWAH, ET AL., PLAINTIFFS-APPELLANTS, CROSS-RESPONDENTS, v. BERGEN COUNTY BOARD OF TAXATION, DEFENDANT-RESPONDENT, CROSS-APPELLANT.

Superior Court of New Jersey
Appellate Division

Argued May 9, 1983-Decided June 20, 1983.

Before Judges ARD, KING and McELROY.

On appeal from the New Jersey Tax Court, whose opinion is reported at 3 N.J. Tax 513 (1981).

Brian T. Campion argued the cause on behalf of appellants (*Breslin & Breslin*, attorneys, E. Carter Corriston, of counsel).

Harry Haushalter, Deputy Attorney General, argued the cause on behalf of respondent Bergen County Board of Taxation (*Irwin I. Kimmelman*, Attorney General of New Jersey, attorney; *James J. Ciancia*, Assistant Attorney General, of counsel).

Jacob Schneider argued the cause on behalf of respondents Township of Teaneck and Werner H. Schmid (*Schneider, Schneider & Balt*, attorneys).

Anthony D. Andora argued the cause on behalf of respondents Boroughs of Cresskill, Closter, Fort Lee, Demarest and Little Ferry (*Andora, Palmisano, DeCotiss & Harris*, attorneys; *John J. Langan Jr., Jonathan N. Harris* and *Anthony D. Andora*, on the brief).

Joseph S. DiMaria argued the cause for the Borough of Paramus, *amicus curiae.*

Stuart R. Koenig argued the cause for the Township of Cedar Grove, *amicus curiae* (*Stickel & Koenig*, attorneys).

PER CURIAM.

The judgment of the Tax Court is affirmed for the reasons stated in the opinion of Judge Evers. 3 *N.J. Tax 513* (1981). *See also Newark Superior Officers Ass'n v. Newark*, 187 *N.J. Super.* 390 (App. Div. 1982).

Affirmed.

OPINION OF TAX COURT OF NEW JERSEY FILED NOVEMBER 20, 1981; PUBLISHED AT 3 N.J. TAX 513 (TAX CT. 1981)

MAHWAH TOWNSHIP, JOANNE MAKELY, FRANK P. KARAUS, NEILAN BOMAN, PLAINTIFFS v. BERGEN COUNTY, BERGEN COUNTY, BOARD OF TAXATION, CRESSKILL BOROUGH, CLOSTER BOROUGH, FORT LEE BOROUGH, DEMAREST BOROUGH, LITTLE FERRY BOROUGH, EUGENE P. BARDEN, ELIAS M. ELIASOF, CHARLES WARK, EDWARD W. JANSEN, NICHOLAS CORBISCELLO, FAIR LAWN BOROUGH, TEANECK TOWNSHIP, WERNER H. SCHMID, ALPINE BOROUGH, TETERBORO TOWNSHIP, ALLENDALE BOROUGH, HACKENSACK CITY, ENGLEWOOD CLIFFS BOROUGH, RIDGEFIELD PARK BOROUGH, LODI BOROUGH, CARLSTADT BOROUGH, FAIRVIEW BOROUGH, DEFENDANTS.

Tax Court of New Jersey

November 20, 1981

E. Carter Corriston and *Brian T. Campion* for plaintiffs (*Breslin & Breslin*, attorneys).

John J. Langan, Jr. for defendant Bergen County (*Dominick Presto*, attorney).

Harry Haushalter, Deputy Attorney General, for defendant Bergen County Board of Taxation (*John J. Degnan*, Attorney General, attorney).

Anthony D. Andora for defendants Cresskill Borough, Closter Borough, Fort Lee Borough, Demarest Borough, Little Ferry Borough, Eugene P. Barden, Elias M. Eliasof, Charles Wark, Edward W. Jansen, Nicholas Corbiscello (*Andora, DeCotiis & Harris,* attorneys).

Jack Ballan for defendant Fair Lawn Borough.

Jacob Schneider and *Peter Ciancia* for defendants Teaneck Township, Alpine Borough and Werner H. Schmid (*Schneider, Schneider & Balt,* attorneys).

David B. Bole for defendants Teterboro Township and Allendale Borough (*Winne, Dooley & Bole,* attorneys).

Melvin Gittleman and *Steven Muhlstock* for defendants Hackensack City and Englewood Cliffs Borough (*Melvin Gittleman,* attorney).

Martin T. Durkin for defendant Ridgefield Park Borough.

John M. DiMaria for defendant Lodi Borough (*Carbonetti & DiMaria,* attorneys).

Joseph P. Winberry for defendant Carlstadt Borough.

Stanley L. Wyrzykowski for defendant Fairview Borough.

Donald E. Morrice on behalf of *amicus curiae* Cedar Grove Township (*Jardine, Morrice & Pagano,* attorneys).

Opinion of Tax Court of New Jersey

EVERS, J.T.C.

The issues involved in this matter are voluminous but all stem from the claim of Mahwah Township (herein Mahwah) for a rebate pursuant to *N.J.S.A.* 54:4-5 (herein rebate statute) of a portion of funds paid by Mahway to Bergen County (herein county) toward the annual county budget from 1972 through 1980 in the approximate amount of $4,750,000. A resolution of this claim requires a determination of the standards which must be satisfied by the claimant in order for it to successfully pursue its claim, as well as a finding as to whether such standards were satisfied. Mahwah also pleaded, in the alternative, that the state-owned Ramapo College and the county-owned Police and Fire Acadamies, both of which are located in Mahwah, and on which it bases its rebate claim, should be removed from the exempt property list if the court finds that Mahwah is not entitled to a rebate. This alternative argument was made only with respect to 1978, 1979 and 1980. Mahwah's claims to the Bergen County Board of Taxation for a rebate were denied. Various Bergen County municipalities defended against the claim because if Mahwah was successful each Bergen County municipality's share of the total county tax contribution would be proportionately increased.[1]

The constitutionality of the rebate statute was challenged, and therefore the municipality of Cedar Grove in Essex County was permitted to participate as *amicus curiae* in order for it to argue in support of the constitutionality of the rebate statute. Cedar Grove is the only municipality currently receiving a rebate

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1. Before trial various individual taxpaying citizens of defendant municipalities were also allowed to intervene on the same theory. After trial various individual taxpayers of plaintiff were allowed to intervene for the same reason.

pursuant to *N.J.S.A.* 54:4-5. The basis for permitting participation is apparent.

From this beginning the matter developed into a controversy implicating profound issues beyond the realm of local property tax law. In addition to the attack on the constitutionality of the rebate statute which was brought by defendants, the constitutionality of a supplement thereto was challenged by Mahwah. The latter's position was supported by Cedar Grove.[2] Additionally, defendants moved to strike any testimony pertaining to any facilities other than hospitals and for the dismissal of Mahwah's rebate claims for 1978, 1979 and 1980 on the basis that the latter's receipt of payments in lieu of taxation pursuant to *N.J.S.A.* 54:4-22a *et seq.* prohibits Mahwah from obtaining a double benefit.[3]

The rebate statute, *N.J.S.A.* 54:4-5, states:

> A taxing district in a county of the first class having in excess of 800,000 population in which there has been located a state or county institution other than a park commission occupying more than 200 acres and not in excess of 400 acres of land, in the aggregate, shall have remitted or rebated

2. *L.* 1980, *c.* 118 became effective September 22, 1980, subsequent to the close of testimony.

3. Additional motions addressing discovery demands, the intervention of another Deputy Attorney General to defend the constitutionality of the rebate statute, and the taking of judicial notice regarding the distribution of county and state institutions throughout the State were heard and disposed of by separate order.

> by the county treasurer a sum equal to one-half of the county tax rate applied to the entire amount of ratables remaining subject to taxation. A taxing district in such a county of the first class in which there has been located a state or county institution other than a park commission or lands owned or occupied by a park commission occupying in excess of 400 acres of land, in the aggregate, shall have remitted or rebated by the county treasurer a sum equal to three-quarters of the county tax rate applied to the entire amount of ratables remaining subject to taxation.

As previously noted this provision was supplemented by Senate Bill 1265 *L.* 1980, *c.* 118, which states:

> No taxing district which has not actually received a remission or a rebate of county taxes pursuant to *R.S.* 54:4-5 for any full tax year occurring prior to the effective date of this act, shall receive a remission or rebate under that section for the current tax yar or any other tax year whether occurring prior to or after the effective date of this act. Nothing contained in this act shall affect any remission or rebate of county taxes to be received pursuant to that section by any taxing district which actually received a remission or rebate for a full tax year occurring prior to the effective date of this act.

Prior to trial the court entertained defendant's motions for dismissal of Mahwah's complaints on the basis of untimely filing and challenging the constitutionality of the rebate statute.

Defendants, specifically the county board of taxation through the Attorney General, contended that such claims should have been made within 30 days following the county board's adoption of the Table of Aggregates.[4] Clearly the claims were not filed within that period. Defendants reasoned that since a successful Mahwah claim would result in increased contributions to the county by each municipality, which shares must be reflected in the Table of Aggregates, the filing period for a rebate claim commenced to run from the date of promulgation of the Table which failed to recognize Mahwah's claim.

In a letter opinion this court granted defendant's motion for dismissal for the years 1972 and 1973 based on Mahwah's late filing of its complaint. Judgments were entered accordingly. Defendant's motions for the succeeding years were denied.

For the years involved Mahwah petitioned the county board to approve its rebate claim. In each case, with the exception of 1972 and 1973, Mahwah filed the petitions prior to August 15 of the year for which the claim was filed, pursuant to *N.J.S.A.* 54:3-21 under which the vast majority of appeals to the county boards are filed. In every case the county board conducted a hearing thereon and denied the petition. If at any time between 1974 and 1979 the county board denied Mahwah's petitions on the grounds that they were untimely or filed in the wrong forum, no such reasons were ever furnished to Mahwah. To the contrary, the county board heard the arguments and (for whatever reason) thereafter acted upon the petitions by entering judgment denying the claims. Within 30 days following those actions appeals were

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4. *N.J.S.A.* 54:4-52 provides that each county board shall, on or before April 10 (changed to May 3, 1979), adopt a Table of Aggregates.

filed with the Division of Tax Appeals (or the Tax Court) by Mahwah.[5]

Based on this factual foundation the court held that Mahwah did not have to file an appeal directly to the Division of Tax Appeals (or now the Tax Court) within 30 days from the adoption of the Table of Aggregates. This court found that the county board was estopped from repudiating its prior conduct in accepting the complaints, so that Mahwah's filing of an appeal pursuant to *N.J.S.A.* 54:3-21 was justifiable.

The motion for dismissal based on the unconstitutionality of the rebate provision was briefed and taken under advisement. The law concerning the construction of statutes is replete with presumptions in favor of the constitutionality of statutes. One of the fundamental principles of judicial construction is that courts (particularly trial courts) must always avoid a constitutional issue by virtue of an alternative, independent disposition of another issue in the case. *See Donadio v. Cunningham,* 58 *N.J.* 309, 277 *A.* 375 (1971); *Matter of R.B.,* 158 *N.J. Super.* 542, 386 *A.*2d 893 (App. Div. 1978); *Value Oil Co. v. Irvington,* 152 *N.J. Super.* 354, 377 *A.*2d 1225 (Law Div. 1977), aff'd 164 *N.J. Super.* 419, 396 A. 2d 1149 (App. Div. 1978); *Rybeck v. Rybeck,* 141 *N.J. Super.* 481, 358 *A.*2d 828 (Law Div. 1976), app. dism. 150 *N.J. Super.* 151, 375 *A.*2d 269 (App. Div. 1977); *Tonsorial Inc. v. Union City,* 115 *N.J. Super.* 33, 277 *A.*2d 909 (Law Div. 1977), and *Shanley v. Nuzzo,* 160 *N.J. Super.* 436, 390 *A.*2d 158 (Cty. Ct. 1978).

If, in fact, Mahwah does not prove the requisite elements of *N.J.S.A.* 54:4-5, it would then be purposeless to address the

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5. For the 1980 tax year a complaint was filed directly in the Tax Court.

constitutional question. In short, this matter must first be scrutinized in terms of its substantive merits before the constitutional issue can be considered.

It is significant to note that the only reported Supreme Court case construing the rebate provision, *Paramus v. Capello*, 66 *N.J.* 1, 326 *A.*2d 685 (1974) held:

> We find it unnecessary to consider and decide the issues of constitutionality, arbitrariness, and retroactivity which have substantial implications beyond the confines of this case. [At 5, 326 *A.*2d 685]

There the court affirmed the Division of Tax Appeals' finding that "large sections of the 185 acre Bergen Pines complex are presently unused." *Ibid.* It is obvious that even the Supreme Court avoided the constitutional issues since there was a substantial independent ground of disposition. This court would be remiss in failing to hold that the *Capello* case is controlling in this respect.[6]

During the course of the trial defendants urged dismissal of the complaints on the ground that the rebate act applied only to hospitals. Decision was reserved. This argument was based on defendants' construction of *N.J.S.A.* 54:4-5 and *N.J.S.A.* 54:4-2.2a *et seq.* (The State Payments in Lieu of Taxation Act). *N.J.S.A.* 54:4-2.2a states:

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6. Earlier mention was made of the post-trial attack on the constitutionality of the supplement to *N.J.S.A.* 54:4-5, *L.* 1980, *c.* 118. Even though defendant asserted it was dispositive of the instant matter, Mahwah asserted that it was unconstitutional, the same principle of judicial restraint applies *a fortiori.*

> "State property" means land and improvements owned by the state and includes but shall not be limited to state offices, hospitals, institutions, schools, colleges, universities, garages, inspection stations, warehouses, barracks and armories together with abutting vacant land held for future development for the same purposes. State property shall not include that used or held for future use for highway, bridge or tunnel purposes or property which is qualified under state law for any other state payment in lieu of taxes.

Defendants maintain that these provisions, coupled with the legislative intent underlying the rebate statute, demonstrate that the rebate statute applies only to hospitals.[7] Thus, defendants moved to strike any testimony pertaining to the state-owned Ramapo College facility. The argument is not well taken. Defendants failed to persuade this court that the Legislature, by enacting *N.J.S.A.* 54:4-2.2a *et seq.*, implicitly buttressed the purported intention found in the rebate provision that hospitals were the only institutions coming within its ambit. When a court is asked to construe a statute on the basis of an inference or implication, the proffered construction must demonstrate that what is purportedly implied is done so in a clear fashion. *Juzek v. Hackensack Water Co.*, 48 *N.J.* 302, 225 *A.*2d 335 (1966) and *Giles v. Gassert*, 23 *N.J.* 22, 127 *A.*2d 161 (1957). This principle is especially critical in matters of taxation since in construing a tax statute significance must be ascribed to clearly intelligible and declaratory words of the statute, and it must be assumed that

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7. Cedar Grove has annually qualified for and received a rebate on the basis of a hospital located therein.

they were used purposefully. *Wilentz v. Hendrickson*, 133 *N.J. Eq.* 447, 33 *A.*2d 366 (Ch. 1943), aff'd 135 *N.J. Eq.* 244, 38 *A.*2d 199 (E. & A. 1944).

[1] The rebate statute uses the phrase "state or county institution other than a park commission or lands owned or occupied by a park commission . . . ." The text itself demonstrates that the Legislature had property other than hospitals in mind, in view of the reference to park commission lands. By express exclusion it revealed the class of property to be general since the exclusion for county park lands would be mere surplusage if the Legislature intended that hospitals were the only type of property implicated by the provision.

In rebuttal to Mahwah's argument made in opposition to this motion, defendants argued that because Mahwah was receiving payments in lieu of taxation pursuant to *N.J.S.A.* 54:4-2.2a *et seq.*, they could not get the double benefit of a rebate pursuant to *N.J.S.A.* 54:4-5. This argument actually was directed at the fact that Mahwah pleaded alternatively that if it did not qualify under the rebate statute the subject property should be deleted from the exempt rolls. Defendants argued that *N.J.S.A.* 54:4-2.2a *et seq.* was in effect a waiver of the exemption by the State.

The original provision allowing for payments in lieu of the taxation of state property, *N.J.S.A.* 54:4-2.1, provided in pertinent part:

> All lands, except riparian lands and lands excepted by Section 54:4-2.2 of this Title, owned by or held in trust for the state, which are used or to be used for state purposes, . . .shall be taxed in the municipality wherein such lands are situate,

> for municipal and local school purposes, unless the aggregate area of such lands is less than nine percentum of the total area of the municipality after deducting from the total area of the municipality so much thereof, if any, as is exempt from taxation because it comprises state forests, state parks, riparian lands, lands held by the State Board of Proprietors or lands held for highway, bridge or tunnel purposes or exempt from taxation under the provisions of Article 1 of Chapter 8 of the Title "Conservation and Development—Parks and Reservations" (Section 13, 8-1 *et seq*), or Sections 54:4-5 or 54:4-6 of this Title. . .There shall not be included in the assessed valuation of such lands any improvements constructed or erected by this state . . . .

Thus, only land owned by the State was permitted to be taxed. Significantly, *N.J.S.A.* 54:4-2.2 provided that 54:4-2.1 "shall in no way effect Sections 54:4-5 or 54:4-6. . .and no taxation of lands mentioned in. . .said Sections 54:4-5 or 54:4-6 shall be made under provisions of said Section 54:4-2.1." Thus, this section preserved the independent vitality of the rebate provision by expressly harmonizing it with *N.J.S.A.* 54:4-2.1.

In *L.* 1977, *c.* 272, §12, *N.J.S.A.* 54:4-2.1 and *N.J.S.A.* 54:4-2.2 were repealed and *N.J.S.A.* 54:4-2.2a *et seq.* was enacted to replace the repealed provisions. *L.* 1977, *c.* 272, §1 *et seq.*[8]

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8. The effective date of the new act was July 1, 1977. Consequently, payments did not commence until the 1978 tax year. Such is the case here as to Mahwah. No evidence was adduced that established Mahwah ever received such payments before 1978.

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[2] *N.J.S.A.* 54:4-2.2a clearly included improvements within the meaning of "state property" that must be assessed as if the "state property" was not exempt. *N.J.S.A.* 54:4-2.2.c. *N.J.S.A.* 54:4-2.2e provides the statutory formula for calculating the State's tax liability. The most significant provision for purposes of this matter is *N.J.S.A.* 54:4-2.2b, which states:

> Notwithstanding the provisions of any other law and to compensate municipalities for the impact upon local government cost of local services to state property, such property shall be assessed and subject to an in lieu tax payment provided in this act.

The clear language of this provision indicates that the sole relief accorded to municipalities burdened with state property within its borders is payment in lieu of taxation pursuant to *N.J.S.A.* 54:4-2.2a *et seq.* Accordingly, defendant's motion is granted with respect to the years 1978, 1979 and 1980 and Mahwah's claims will accordingly be dismissed.

[3] The effect of this determination is that, assuming arguendo that Mahwah can prove its claim as to the balance of the property (the Bergen County Police and Fire Academy, consisting of approximately 24 acres), it still cannot qualify under the rebate statute since the area of the balance of the property does not even approximate the minimum of 200 acres required by the rebate statute. Likewise, Mahwah's claim for exemption regarding the college complex must be dismissed since the Payment in Lieu of Taxation Act already effectively removed the exemption. Its exemption claim as to the Bergen County Police and Fire Academy for the years 1978, 1979 and 1980 remains unaffected by this holding and must be further addressed, along with Mahwah's rebate claim for the years 1974 through and including 1977.

The evidence adduced was primarily directed toward satisfying the element of use or occupation as employed in the rebate and public property exemption statutes. The thrust of the voluminous testimony must be interpreted in light of the standard of use employed by both provisions. Thus, the key issue concerning the substantive claims of Mahwah is the question of what is the appropriate standard of use within the meaning of the rebate statute.

The critical langu age of the rebate statute states that in order for the taxing district to qualify for the rebate, "a state or county institution. . .occupying more than 200 acres and not in excess of 400 acres of land" must be located therein. The key word, "occupying," was construed, with respect to land adjacent to a county-owned hospital complex, in *Paramus v. Capello,* 66 *N.J.* 1, 4, 326 *A.*2d 685 (1974) to "mean something more than mere ownership of land and connotes actual governmental use." In *Bergen Cty. v. Paramus,* 158 *N.J. Super.* 512, 517, 386 *A.*2d 878 (App. Div. 1978), the court held, in a case concerning the same property as in *Capello*, that "the criteria of 'occupied' and 'used' respectively employed in *N.J.S.A.* 54:4-5 and *N.J.S.A.* 54:4-3.3 are identical," since "these provisions are *in pari materia.*" Although the Supreme Court remanded the matter to the Division of Tax Appeals, it agreed with the Appellate Division regarding its construction of *N.J.S.A.* 54:4-5 and *N.J.S.A.* 54:4-3.3. *Bergen Cty. v. Paramus,* 79 *N.J.* 302, 309, 399 *A.*2d 616 (1979).

Consequently, the Supreme Court has equated the word "occupied" in *N.J.S.A.* 54:4-5 with the key language, "used for public purposes," in *N.J.S.A.* 54:4-3.3, and opined that "the statutory language 'used for public purposes' clearly contemplates that something more than ownership must be established. The word 'used' connotes employment or application to an end." *Id.* at 306, 399 *A.*2d 616.

It must be emphasized that both of the foregoing cases dealt with the construction of the rebate statute and/or public property statute vis-a-vis county-owned property—a significant factor to be considered herein. The language in the two cases clearly indicates that the standard of use within the meaning of the rebate statute means something more than mere ownership. But this language must be understood in terms of the public property exemption vis-a-vis county-owned property. The property herein is composed primarily of state property. The significance of this fact is that, in construing the rebate statute vis-a-vis state property, the payments in lieu of taxation statute must be construed *in pari materia* with the public property statute and rebate statute.

Of the public property statute, the rebate statute and the payments in lieu of taxation statute, the public property statute was the first provision enacted regarding the taxation of state property. *L.* 1866, *c.* 487, §5, *p.* 1079, stated:

> The property and the bonds and other securities of the United States, and the bonds and securities of this state, which are by law exempt from taxation, the property of the counties, townships, cities and boroughs of this state, and stocks and other personal estate owned by citizens of this state, situate and being out of this state, upon which taxes shall have been actually assessed and paid within twelve months next before the day prescribed by law for commencing the assessment.

L. 1903, *c.* 208, §3(2), significantly revised this provision:

> The property of the United States and of the State of New Jersey and of the respective counties,

> school districts, and taxing districts when used for public purposes, but this exemption shall not include real property bought in for debts or on foreclosures of mortgage given to secure loans out of public funds or out of money in court, which property shall be taxed unless devoted to public uses. . . .

In *L.* 1918, *c.* 236, §203(2), the Legislature again revised this exemption:

> The property of the United States and of the State of New Jersey; property of the respective counties, school districts, and taxing districts, when located therein and used for public purposes, but this exemption shall not include real property bought in for debts or on foreclosures of mortgages given to secure loans out of public funds or out of money in court, which property shall be taxed unless devoted to public uses.

The placing of a semicolon in the act in order to set off state and federal property from other public property effected a subtle yet profound change. State and federal property no longer had to be "used for public purposes" as did county, school districts and taxing district property. This subtle yet significant feature of the statute is often overlooked and yet this exemption was carried forth through the years in substantially the same form and was codified as the first section of *N.J.S.A.* 54:4-3.3.[9]

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9. The second section regarding water supply property was added by *L.* 1910, *c.* 118, *p.* 199; the third section regarding Morris Canal and Banking property was added by *L.* 1924, *c.* 77, *pp.* 150-151.

The rebate statute had a common ancestor with the public property exemption statute since the rebate statute was also derived from *L.* 1918, *c.* 236, §203(2). The rebate statute made its first appearance in *L.* 1922, *c.* 130:

> 1. Any taxing district in any county of the first class in this state in which there has been located any state or county institution occupying 200 acres or more of land shall have remitted or rebated by the county collector a sum equal to one-half of the county tax rate applied for the entire amount of ratables remaining subject to taxation.
>
> 2. The county board of taxation of said county shall by rule prescribe how said remission or rebate shall be paid or credited to the collector of said taxing district by the county collector and how his or her proportionate part shall be returned or credited to each taxpayer.

L. 1928, *c.* 176, amended the rebate statute to read as follows:

> 1. Any taxing district in any county of the first class in this state in which there has been located any state or county institution or institutions occupying more than 200 acres and not in excess of 400 acres of land, in the aggregate, shall have remitted or rebated by the county collector a sum equal to one-half of the county tax rate applied for the entire amount of ratables remaining subject to taxation. Any taxing district in any county of the first class in this state in which there has been located any state or county

> institution or institutions occupying in excess of 400 acres of land, in the aggregate, shall have remitted or rebated by the county collector a sum equal to three-fourths of the county tax rate applied for the entire amount of the ratables remaining subject to taxation.

This substantial modification clearly permitted the aggregating of institutions and contained a provision addressing the taxation of institutions (or institution) occupying more than 400 acres. In *L.* 1932, *c.* 128, the Legislature limited the definition of institutions to those institutions "other than park commission, or lands owned or occupied by any park commission." In *L.* 1952, *c.* 295, the Legislature added the population requirement of "in excess of 800,000" to the condition of being a first class county, while also providing for a rebate to first class counties having less than 800,000 citizens within its borders. This last proviso as to first class counties having less than 800,000 people was deleted in *L.* 1968, *c.* 467. The final legislative action regarding the rebate statute was *L.* 1980, *c.* 118, *supra.* That action appeared to have preserved the rebate for those taxing districts which had "the money in hand" before the effective date of the supplement—September 22, 1980.

Of the three acts, the payments in lieu of taxation provisions were the latest to arrive on the scene of the taxation of state property. That act made its initial appearance in *L.* 1935, *c.* 250. That legislative expression was essentially the same as the form of the statute before its repeal by the new Payments in Lieu of Taxation Act (*L.* 1977, *c.* 272). The obvious intent of this statute was "to assist the localities in which state holdings are large." *Todd Shipyards Corp. v. Weehawken,* 45 *N.J.* 336, 343, 212 *A.*2d 364 (1965).

[4] The same underlying purpose must be ascribed to the rebate statute. *Paramus v. Capello, supra*, 66 *N.J.* at 4, 326 *A.*2d 685. Both statutes sought to compensate taxing districts, yet they accomplished their common objective in different ways.

The rebate statute compensated taxing districts for the impact of state-owned land and *improvements* (other than parklands from the years 1932 *et seq.*), while the Payments in Lieu of Taxation Act originally sought to compensate taxing districts only on the basis of land and not improvements. It was not until 1977 that the Payments in Lieu of Taxation Act (*N.J.S.A.* 54:4-2.2. *et seq.*) used improvements as a basis for compensation. Since its effective date the Payments in Lieu of Taxation Act in effect superseded the rebate statute where a taxing district was compensated pursuant to *N.J.S.A.* 54:4-2.2a *et seq. See N.J.S.A.* 54:4-2.2.b.

Based on the foregoing analysis of this comprehensive scheme, it is quite clear that the pre-1977 Payments in Lieu of Taxation Act attempted to partially compensate taxing districts for the loss of ratables by virtue of large amounts of state-owned property (raw land). The rebate statute, since its inception, compensated taxing districts on the basis of services rendered to the *improved* land, *i.e.*, institutions. See Legislative Statement to *L.* 1922, *c.* 130. The rebate statute wasmuch less concerned with the loss of ratables than the old Payments in Lieu of Taxation Act. The new Payments in Lieu of Taxation Act changed the scheme profoundly since it clearly sought to compensate taxing districts on the basis of services rendered to state property land and building included.

[5] From this analysis it is clear that the Legislature's focus has changed with the times, and it is not possible to draw any single standard of use from the comprehensive legislative scheme. While each statute is a limited counterpart of the other, they are

not, strictly speaking, identical in terms of their operative language. Yet the expansive language found in the *Capello* and *Bergen County* cases seems to suggest that the key to unraveling the rebate statute rests in the public property statute's language, "used for public purposes," since the criteria of "occupied" and "used" respectively employed in *N.J.S.A.* 54:4-5 and *N.J.S.A.* 54:4-3.3 are identical. *Bergen Cty. v. Paramus, supra,* 158 *N.J. Super.* at 517, 386 *A.*2d 878. If this language were taken literally, however, the standard found in the rebate statute (incorporated from the public property statute) vis-a-vis state property would be mere ownership, since state property need not be "used for public purposes," according to the express terms of that statute. Such construction would create a double standard—one for state property and another for other public property in general. Moreover, such standard would allow taxing districts to qualify under the rebate statute merely on the basis of having state-owned property within its borders, notwithstanding the fact that such land might be used for a private purpose. Such a construction would fly in the face of the underlying purpose of the rebate statute and would flout its use of the word "occupied." Consequently, this court holds that the standards set forth in the *Capello* and *Bergen County* cases shall apply likewise to state property so that such state property must be "used for public purposes," because:

> The rebate provision is a limited counterpart of the tax exemption. It is a method which the Legislature created to compensate some municipalities for revenues they would have otherwise received if the property had not been exempt from taxation, a condition which arose by virtue of public ownership and use. [*Bergen Cty. v. Paramus, supra,* at 309, 399 *A.*2d 616].

The court also set forth the appropriate standard for vacant land:

> To interpret the word "used" to mean only actual use would be unrealistic, for a period of time will undoubtedly run between acquisition and placing the property in use. Some lead time will be involved due to the readying of the land and constructing whatever type structures may be needed. Between these extremes is what we conceive to be the legislative intent—namely, a present intent to devote the property to a public use within a reasonable length of time. [*Id.* at 308, 399 *A.*2d 616.]

The leading case construing the phrase "used for public purposes" is *Newark v. Essex Cty. Bd. of Taxation*, 54 *N.J.* 171, 254 *A.*2d 513 (1969). There the court incorporated the construction of the phrase "public purpose" found in *Roe v. Kervick*, 42 *N.J.* 191, 207, 199 *A.*2d 834 (1964), into its opinion regarding *N.J.S.A.* 54:4-3.3:

> The concept of public purposes is a broad one. Yet broadly speaking, it connotes an activity which serves as a benefit to the community as a whole, and which, at the same time is directly related to the functions of government. Moreover, it cannot be static in its implications. To be serviceable it must expand when necessary to encompass changing public needs of a modern, dynamic society. Thus it is incapable of exact or perduring definition. In each instance where the test is to be applied the decision must be reached with

> reference to the object sought to be accomplished and to the degree and manner in which the object affects the public welfare. [Citations omitted.]

[6] The foregoing principles and standards must be viewed in the context of the critical principle of construction which is at the heart of the public property exemption and which holds that while exemptions regarding private institutions are strictly construed, *Bloomfield v. Academy of Medicine*, 47 *N.J.* 358, 221 *A.*2d 15 (1966), exemptions available to political entities are liberally construed. In *Hanover v. Morristown*, 4 *N.J. Super.* 22, 66 *A.*2d 187 (App. Div. 1949), the court held this principle to be applicable to the public property statute. *See, also, Newark v. Essex Cty. Bd. of Taxation, supra,* 54 *N.J.* at 184-185, 254 *A.*2d 513.

Accordingly, this court is bound to apply the foregoing standards so that the degree of use of the subject property must be measured by the institutional aims in conjunction with the actual use of the property. In short, the measure of the rebate statute is the purposeful use of the subject property as it reflects the essential character of both land and building. It must again be emphasized that the actual physical occupation is not the standard.

Although these standards must apply equally to all public property, there is yet an additional factor to be considered that was not before the courts in the *Capello* and *Bergen County* cases.

[7, 8] For the remaining years in question herein (1974-1977) the Bergen County Police and Fire Academy enjoyed tax exempt status pursuant to the public property statute. Thus, for those years it was "used for public purposes" on account of its being county property. According to the *Bergen County* case, as to

county land, "denial of the rebate statute unquestionably implies that the land is not exempt from taxation." 158 *N.J. Super.* at 517, 386 A.2d 878. Thus, the obverse of the proposition is true that exemption from taxation unquestionably implies an allowance of the rebate as to county property. Stated differently, if county property is exempt pursuant to the public property statute, it meets the test of the rebate statute. This principle is at the heart of the litigation in the *Capello* and *Bergen County* cases but in the exemption case (*Bergen County*) the taxing district never honored the county exemption claim. Here Mahwah has always honored the exemption claim as to the Police and Fire Academy and the exempt status of the property is no longer in question since Mahwah only contested the exempt status of the property for the years 1978 through and including 1980. These years are no longer in issue by virtue of the impact of *L.* 1977, *c.* 272 (the New Payments in Lieu of Taxation Act). See *supra*. Consequently this court is constrained to hold that the Bergen County Police and Fire Academy comes within the meaning of "occupied" under the rebate statute.[10]

[9] Unlike county property, an exemption of state property pursuant to the public property exemption is premised solely on ownership. Thus, a public property exemption for a state property does not necessarily imply that such property qualifies under the rebate statute, because such state property exemption does not include the element of "used for public purposes." Therefore, the evidence concerning the college must be scrutinized.

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10. The amount of acreage of the Police and Fire Academy was in dispute; Mahwah maintained the property consists of 26.7 acres while defendants maintain 24.98 was the correct area. I will adopt defendants' figure.

The college complex is located in the developing community of Mahwah, which is situated in northwest Bergen County. From the evidence it is concluded that the campus contains approximately 357 acres. The sprawling country-like campus is bisected by Route 202 (Ramapo Valley Road), which runs north-south. The testimony describing the campus, its year-by-year development and the uses to which its 357 acres were devoted during each year in question was voluminous and detailed. In some areas the land was described as low and swampy; in others as high and rocky. Some of the higher rocky areas were described as precipitous. A goodly portion of the complex is wooded. Even if it were possible, in the view I take of this matter, a detailed description of every nook and cranny of the tract is purposeless. Following, therefore, is a general description of the three major areas which make up the complex.

The area to the west of Route 202, hereinafter referred to as 202-west, consists of approximately 29 acres and contains some improvements, including tennis courts, baseball field and a running track. The construction of these improvements covered the period from 1975 through 1978. Also located in this area is some student housing which earlier served as the residence of the college president when the land was acquired in 1971. Also located thereon is a sewage treatment plant which was constructed in 1971. The unimproved sections of 202-west contain a utility easement, the Ramapo River and alternately wooded and cleared lands. The northernmost portion of 202-west is vacant land and is located in the flood plain of the Ramapo River. In general, 202-west was described as wooded and open, but mostly wooded during the period in question—a description which reinforces the rural character of the campus.

The 328 acres east of Route 202 are comprised of the college proper (hereafter referred to as the core area) and a large unbroken

wooded area which, in some places, contains severe grades and actually serves as the eastern border of the complex (hereafter called the eastern perimeter). A general description of each area follows.

The main entrance to the campus is on the eastern side of Route 202 across from that part of 202-west on which is found the tennis courts, baseball field and track. The main entrance road, which runs east-west, connects directly with the center of the core area which contains the vast majority of the college buildings. Located therein are a variety of buildings which are devoted to uses commonly associated with a college and with campus living. In addition to administrative, dormitory, physical education, library and classroom buildings, the core contains various parking areas, maintenance buildings, storage sheds, center for the handicapped, alternate energy center, greenhouse, student-life building and various and sundry structures. On the fringes of the core area are located various athletic fields devoted to football, soccer and the like. Interspersed throughout the core area are wooded sections, grassy areas, ponds and streams of varying sizes. All sections of the core area are connected with a network of primary and secondary roads and paths which vary in width and in quality.

The improvements in the core area were constructed over a period of years, commencing in about 1971 to the present. Planned future development depends in large measure on the availability of government funds. From its relatively small beginning the college proper (core area) has constantly expanded in size to a point where, at present, it can best be described as substantial. Befitting its rural character, the various buildings and other improvements portray an uncrowded picture and, in most instances are separated by wooded and landscaped areas. During

the period in question the core area contained an average of approximately 165 acres, leaving a balance of approximately 173 acres in the perimeter area.

Approximately 66 acres of the perimeter area are included in a right-of-way in favor of the State of New Jersey, to be used ostensibly for the construction of the unfinished northwest portion of Route I-287.[11] The entire perimeter area actually serves as the eastern border of the campus. It varies in depth and, as to its almost unbroken wooded areas, in density.

It was the use of the perimeter area and particularly its northern and southern sections that were primarily disputed by defendants. Also disputed were the uses to which selected wooded and other limited areas in the core and 202-west sections were devoted.

Through the testimony of their own witnesses defendants conceded that a substantial portion of the complex was "used" within the meaning of the rebate statute in various amounts for each year. For 1974-1975 defendants allowed that between 116.68 and 121.82 acres were used. In 1976-1977 they concede that between 144.74 and 150.79 acres were used. The somewhat substantial difference between the 1974-1975 and 1976-1977 periods is accounted for by defendants' insistence that during the earlier period 202-west was not used in any sense of the word.

The court accepts the lower acreage figures in each year as an admission of the use of the subject property. I find that the

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11. This area is not "state property" within the meaning of the Payments in Lieu of Taxation Act, *N.J.S.A.* 54:4-2.2a. Consequently, this state-owned property is unquestionably exempt under the Public Property Act, *N.J.S.A.* 54:4-3.3.

use of that acreage was fully supported by the proofs. It being Mahwah's burden to prove that at least 200 acres were used, it first argued that the entire complex qualified and, alternatively, that even if most of the perimeter area was considered unused, the rebate statute's test was still satisfied.

In order to place the factual dispute in focus, an awareness of some background information concerning this educational complex is necessary. The college was established by the State Legislature in 1968 in response to the pressing need to improve and expand higher educational facilities in the State. In November 1968 a bond issue was approved by the voters for that purpose in the amount of $15,000,000. Except that the enabling act specified Bergen County as its home, the exact location of the new college was undetermined at that time. A board of trustees appointed by a new State Board of Higher Education, was organized in February 1969. The first president was appointed in June 1969; a temporary office opened in Hackensack in September and shortly thereafter additional staff was appointed to undertake a detailed study of the proposed college program and the actual establishment of facilities. After reviewing approximately 30 possible locations, the 357-acre Mahwah site was selected. The temporary designation of State College of New Jersey was discarded and Ramapo College of New Jersey was born.

Its beginnings were small. Ground was broken for the first new classroom building in November 1970. It was completed in September 1971 and approximately 1,200 students were enrolled. Science laboratories and student housing were nonexistent, but these needs were filled through rented space from a nearby army facility for use as laboratories and through prevailing on a nearby Boy Scout camp, a seminary, faculty members and community residents, to provide housing. At the same time the academic

program was under development. The college's determination to feature interdisciplinary studies led to a decentralized structure of several small units of faculty and students into separate schools. The college was certified by the Middle States Association of Colleges and Secondary Schools in December 1973. From its 1971 enrollment of 1,200 students the population grew to approximately 4,000 students by 1974. Approximately 30-40 courses utilized the natural facilities of the college.

The testimony clearly demonstrated that Ramapo College is a unique educational institution in that the character and design, in terms of both the lay of the land and style and location of buildings, reflects its bucolic nature. The record is replete with testimony indicating that in developing the campus and constructing its buildings there was no simple bulldozing of the land or haphazard erection of structures. Clearly, attempts were made to create a learning environment consonant with the physical environment of the campus and its surrounding area. Consequently, in terms of "using" the college lands, the aggregate of the curricular and extracurricular activities must be considered in terms of the integrated personality of the property.

Eight faculty members from the departments of geology, ecology and physical education testified that, at one time or another, and for all years in question, virtually the entire complex was utilized in some manner. Many exhibits were utilized by these witnesses on which they traced the course of such activities as cross-country, orienteering courses and the areas of such activities. Detailed testimony was given with respect to the nature of the subjects, the use of the outdoors in connection therewith, the frequency with which they were taught and the number of students in attendance. In addition to the outdoor classroom courses, the witnesses testified that courses in "teaching in the outdoors,"

archery, golf, attitudes toward the outdoors, snowshoeing, skiing and the like, utilized the wooded and lawned areas of the campus. Furthermore, according to the testimony, these areas were often used by students in their free time for private uses such as jogging, walking, picnicking, sunbathing, frisbee contests and the like.

While the use of these areas for outdoor athletic and private activities was readily understandable, of great interest was the testimony of the ecology and geology faculty members. Involved in these courses were detailed studies of all growth, of rocks and minerals, of the Ramapo Fault which bisects the complex and of the organic matter found in the streams, ponds, river and flood plain. Throughout the testimony the importance of having such natural facilities "on campus" as opposed to "off campus" in terms of time, expense and convenience was stressed.

Objections were taken by defendants to that testimony which was purportedly supported by tracings and areas of use placed on the exhibits. These objections were premised on the mistaken theory that physical trespass and/or intensive land use was the standard inherent in the rebate statute. The evidentiary value of this testimony lies not in its terms of precision but in determining general areas and frequency of use. To that end I find the composite picture drawn from this testimony to be very persuasive in establishing actual, albeit noncontinuous, use of the property.

In summary, it is clear that as to each year in question this testimony *in the aggregate* demonstrated, by a fair preponderance, that virtually the entire complex was used, within the meaning of the rebate statute. The court fully acknowledges that it is equally as clear that every square foot of the complex has not been trod upon yet the quilt of activities established by these witnesses clearly demonstrates that the complex was utilized to a great extent. The

record fully supports the recognition that the curricular and extracurricular activities rose to that level of use which warrants the relief accorded to taxing districts under the rebate statute.

While it cannot be stated that the entire 357-acre complex was physically trespassed, I do find that virtually the entire tract was used within the meaning of the rebate statute. Nonetheless, because of the magnitude of this matter and the public importance therein I will make specific findings in order to avoid any conceivable ambiguity or confusion.

[10] Such findings commence with the minimum amount of acreage conceded to be used in accordance with the rebate statute by the defendants: 116.68 acres in 1974-1975 and 144.74 acres in 1976-1977. As for the years 1974 and 1975, I find that the western portion of the complex (approximately 29 acres) should be included despite defendants' contention that such area was not used in any sense of the word before 1976. This finding is based on the testimony of Professor Drew, who testified that her geology classes used the flood plain area and the area north of said area for field work purposes for the years 1973 and following. Her coordinates were placed on the survey map with specific reference to natural monuments and features of the land, so that I accord great weight to the accuracy of her testimony as it concerns both specific and general areas of activity.

This finding also has support in the testimony of a physical education professor who testified that this western portion was used in the spring and fall of 1974 and 1975 for physical conditioning courses. He further testified that for the same time period his orienteering course used a more expansive area in this location. Because of the nature of this rather unusual activity it was clear to the court that it was necessary to conduct it in

an expansive area so that precision, in terms of the square footage, was rendered somewhat inconsequential.

Moreover, I find that since construction of the athletic facility located therein commenced in March 1976, a reasonable amount of lead time for planning and development must be taken into consideration. "Present intent to devote the property to a public use" is a valid, relevant consideration under the rebate statute. *Bergen County, supra,* 79 *N.J.* at 308, 399 *A.*2d 616. This manifestation of present intent was corroborated by part of the college master plan that was introduced into evidence. The plan, composed in 1974, clearly contemplated the use of this area for athletic facilities.

Based on the foregoing it is evident that the entire question turns on the use (or nonuse) of the contested selected sections in the core area and of the perimeter area in its entirety.

[11] I find that an area containing approximately 26 areas, located on Route 202 east and north of the main entrance, was used within the meaning of the rebate statute. It was uncontroverted that this area was used for sundry recreational activities for the period in question. It was also used somewhat intensively for geologic studies, according to the testimony of the geology and ecology professors. Other testimony indicated a small area adjacent to the northern side of the main drive was used occasionally for physical education purposes. It was also testified that the area adjacent to the northern side of the main drive was used for golf ball driving. In 1974 there was taught "teaching in the outdoors," a course that caused the students to traverse this area. In short, the evidence demonstrated by a fair preponderance that this area was used as an integral part of the complex in terms of purely academic as well as recreational activity.

An argument can be made that such use was merely sporadic, but I find that sufficient evidence was adduced to demonstrate that the level of activity was sufficient in terms of quantity and quality to qualify under the rebate statute.

Defendants also argue that certain wooded areas located in the vicinity of the physical education, library and maintenance buildings, all of which were more or less located within the core of the core area, were nothing more than mere groves of trees and should not be considered as "used." These various areas totalled 4.6 acres.

I find that this pruning technique is not reasonable in light of the applicable standard of use and the facts of this case. At various points in the record there was solid testimony demonstrating the concern for the "green image" of the complex. Furthermore, there was specific testimony by the Director of Campus Planning indicating the implementation of such design. For instance, he stated that the student housing located southeast of the library had no air-conditioning, so that the surrounding grove of trees would be used for purposes of protecting it from the heat in the summer and the cold in the winter. He expressly stated energy and resource conservation to be a grave concern of the institution. Moreover, such areas were reasonably appurtenant to the structures themselves.

[12] Yet to be considered is the entire eastern border area of the 173 acres that includes the approximate 66 acres of the right-of-way in favor of the State of New Jersey. As to the southern and northern portions of the perimeter land, which consisted of approximately 63 acres, I find the use of said areas does not rise to the level of activity called for under the rebate statute. This finding is based on the paucity of evidence showing nothing more

than an occasional venture into these outlying areas. It can be argued that this paucity of testimony was equivalent to that which was the basis of finding other areas used within the meaning of the rebate statute. A careful analysis of the record demonstrates that the testimony as to these areas was vague and ambiguous at best. This malady was not shared by the other testimony regarding the property found to be used within the meaning of the rebate statute.

The only remaining problem area was the 66-acre right-of-way in favor of the State of New Jersey for purposes of building I-287. This arc-shaped area covered the entire eastern border of the tract. I find that Mahwah failed to demonstate by a fair preponderance that the level of use therein rose to that required, for the same reasons as previously set forth. This area was apparently randomly used for the orienteering courses, by ecology students and for cross-country running. Nonetheless, I find that the accumulation of "uses" does not aggregate to that level necessary to qualify. In so finding I note that there appeared to be a sufficient amount of evidence indicating a level of use that would be in accordance with the standard found in the rebate statute with respect to the area due east of the maintenance shed and located in this right-of-way. I would be inclined to so hold, but for the fact that later Mahwah offered no evidence that would permit this court to excise this property from the right-of-way. Therefore I am constrained to find this area not to be so used, simply out of the sheer impossibility of determining the amount of acreage therein.

With respect to the remaining 44 acres of the perimeter area I find, as was the case with the other "used" areas, that the testimony in the aggregate supports a finding that Mahwah met the fair preponderance test. The unrefuted testimony of the various

faculty members clearly indicated that this remaining area was sufficiently utilized for both academic and nonacademic purposes so as to satisfy the statutory mandate.

[13] In summary, then, 129 acres of this perimeter area cannot be considered used within the meaning of the rebate statute. Thus, to put the proposition in the positive, 44 acres of said area will be added to the total of 176.28 acres in 1974-1975 and 204.34 acres in 1976-1977 which have already been determined to be used for the purposes of the rebate statute. Adding in the 24.98 academy acres the total area used, was 240 acres and 268 acres in 1974-1975 and 1976-1977, respectively. Based on the foregoing it is apparent that Mahwah qualifies for the rebate. For each year the total acreage "used" exceeds the 200-acre minimum.

In view of the foregoing this court must address the constitutional issues raised by the parties. I will first address the constitutionality of the supplemental act due to the fact that if it is constitutionally sound Mahwah's claims will be dismissed and the rebate statute will be otherwise preserved intact.[12]

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12. Support for this approach is found in *Schaad v. Ocean Grove Camp Meeting Ass'n*, 72 *N.J.* 237, 251, 370 *A.*2d 449 (1977), overruled on other grounds in *State v. Celmer*, 80 *N.J.* 405, 404 *A.*2d 1 (1980):

> Where there is more than one potential constitutional basis for invalidation of a restriction based upon a statute and a dependent ordinance, as here, a court should, lean toward that *ratio decidendi* a judgment which will save as much of the statute and ordinance or of the range of their application, as possible, and rest its invalidation thereof on the narrowest basis consistent with relief to the successful suitor.

This proposition is a corollary of the previously discussed "rule of necessity."

Mahwah contends that the supplement is unconstitutional by virtue of its being a special law violative of Art. IV, § VII, par. 8, of the New Jersey Constitution and that it unconstitutionally deprives it of vested rights in a retroactive manner, in contravention of established principles of constitutional law. As for the argument regarding retroactivity, Mahwah does not focus on one specific state or federal constitutional provision, yet apparently alleges that the supplement deprives it of a vested property right in the sense of maintaining a cause of action to vindicate rights under the main body of the rebate statute. Such an attack, at the very least, arguably implicates due process of law.

Initially it is noted that the law is still unsettled whether a taxing district has standing to raise due process objections vis-a-vis the State. *See, generally, McKenney v. Byrne,* 82 *N.J.* 304, 315, 412 *A.*2d 1041 (1980). The same can be said for the constitutional attack based on the state constitutional provisions. *McKenney v. Byrne, supra. But see Glassboro v. Byrne,* 141 *N.J. Super.* 19, 357 *A.*2d 65 (App. Div. 1976), certif. den. 71 *N.J.* 518, 366 *A.*2d 674 (1976), where it was explicitly stated that an equal protection attack cannot be maintained by a municipality.

In *Salorio v. Glaser,* 82 *N.J.* 482, 414 *A.*2d 943 (1980), the Supreme Court held that:

> Our state constitution contains no analogous provision [analogous to the federal constitutional provision regarding case or controversy] limiting the subject matter jurisdiction of the Superior Court. See New Jersey Constitution (1947), Article VI, Sec. 3, Par. 2. This court remains free to fashion its own law of standing consistent with notions of substantial justice and sound judicial administration. We therefore find it unnecessary

> to consider whether federal standing requirements have been met. [at 490, 414 *A.*2d 943; footnote omitted]

The court further stated:

> We have consistently held that in cases of great public interest, any "slight additional private interest" will be sufficient to afford standing. [at 490, 414 *A.*2d 943; citation omitted.][13]

Consequently, by virtue of the profound public interest implicated herein and because of the presence of a private interest, however slight with respect to the individual taxpayers-intervenors, this court finds that it must address these constitutional issues. *McKenney v. Byrne, supra* 82 *N.J.* at 315, 412 *A.2d* 1041, n. 4. *See, also, Koons v. Atlantic City,* 134 *N.J.L.* 329, 47 *A.*2d 589 (Sup. Ct. 1946), aff'd 135 *N.J.L.* 204, 50 *A.*2d 869 (E. & A. 1947).

With respect to the claim of special legislation, the test to determine whether a statute is special legislation was stated in *Harvey v. Essex Cty. Freeholders Bd.,* 30 *N.J.* 381, 153 *A.2d* 10 (1959), as follows:

> In deciding whether an act is general or special, it is what is excluded that is the determining

13. In *Kenney v. East Brunswick,* 172 *N.J. Super.* 45, 410 *A.*2d 713 (App. Div. 1980), it was held that a municipality had standing to contest legislation as a special law since it might have been required to expend public funds therefrom. Furthermore, and of particular importance herein, the municipality challenged the constitutionality of the provision by way of a defense. Based on these grounds the Appellate Division held the municipality did have standing under the facts of that case.

factor and not what is included. *Budd v. Hancock,* 66 *N.J. Law* 133, 135-136, 48 *A.* 1023 (Sup. Ct. 1901). If no one is excluded who should be encompassed, the law is general. Another requirement of the general law is that it must affect equally all of a group who, bearing in mind the purposes of the legislation, are distinguished by characteristics sufficiently marked and important to make them a class by themselves. In *Van Riper v. Parsons,* 40 *N.J. Law* 1, 9 (Sup. Ct. 1878) the court pointed out that local and especial laws rest on a false or deficient classification in that "their vice is that they do not embrace all the classes to which they are naturally related; they create preference and establish inequality; they apply to persons, things or places possessed of certain qualities or situations, and exclude from their effect other persons, things or places which are not dissimilar in these respects." See also *City of Passaic v. Consolidated Police, Etc., Pension Fund Commission,* 18 *N.J.* 137, 146, 113 *A.*2d 22 (1955); *Sherwood v. Bergen-Hackensack Etc. Authority,* 24 *N.J. Misc.* 48, 53-54, 46 *A.*2d 151 (Sup. Ct. 1946) aff'd. 135 *N.J. Law* 304-306, 51 *A.*2d 197 (E. & A. 1946). With this distinction between a special and a general law in mind, the question is whether any appropriate person is excluded to which the law, but for its limitations, would apply. *Koons v. Board of Commissioners of Atlantic City,* 135 *N.J. Law* 329, 333, 47 *A.*2d 589 (Sup. Ct. 1946) aff'd. per curiam 135 *N.J. Law* 204, 50 *A.*2d 869 (E. & A. 1947); *In Re Freygang,* 46 *N.J. Super.* 14, 23, 133 *A.2d* 672 (App. Div. 1957), aff'd. 25

> *N.J.* 357, 136 *A.*2d 625 (1957). [at 389, 153 *A.2d* 10]

In *Vreeland v. Byrne,* 72 *N.J.* 292, 370 *A.*2d 825 (1977), the method of analyzing such constitutional attacks was succinctly set forth:

> Briefly restated, the method of analysis is this: we first discern the purpose and object of the enactment. We then undertake to apply it to the factual situation presented. Finally we decide whether, *as so applied,* the resulting classification can be said to rest upon any rational or reasonable basis relevant to the purpose and object of the act. [at 300, 370 *A.*2d 825]

[14] It is clear from the controlling authority that the analysis of purported special legislation does not substantially differ from the analysis of noninvidious classifications under the Equal Protection and Due Process clauses. At the heart of all such cases is the rational relationship between the legislative objects and the means employed to achieve the objects. *See Bonnet v. State,* 155 *N.J. Super.* 520, 382 *A.*2d 1175 (App. Div. 1978), motion for summary affirmance granted 78 *N.J.* 325, 395 *A.*2d 194 (1978), and *Raybestos-Manhattan, Inc. v. Glaser,* 144 *N.J. Super.* 152, 365 *A.*2d 1 (Ch. Div. 1976), aff'd 156 *N.J. Super.* 513, 384 *A.*2d 176 (App. Div. 1978). Mahwah maintains that the unequivocal objects of this legislation is to deprive it of the refund under the rebate statute. It further argues that the supplement especially seeks to allow a rebate to the only taxing district now receiving a rebate thereunder (Cedar Grove in Essex County) in spite of the arguably sound claims made under the rebate statute by

Mahwah and Paramus in Bergen County.[14] It concludes that such a course of action is not justifiable under any rationale.

The defendants argue that the purpose of the supplement clearly was to disallow a rebate to otherwise qualified Bergen County municipalities. Yet they maintain that the Legislature acted reasonably in enacting the supplement is based on two propositions purportedly animating the Legislature to enact such a provision. First, they state that the county tax contributions by constituent municipalities in Bergen County are substantially lower than the Essex County contributions. Secondly, they argue that since Bergen County has 70 constituent municipalities while Essex County has only 22, the county tax burden imposed on the Essex County municipalities is obviously much greater than those in Bergen. They thus conclude that the Legislature determined to permit the rebate only to the one qualifying municipality in Essex County, namely Cedar Grove.

[15] Defendants candidly concede that the supplement created a class of one and yet maintain it is a reasonable legislative response to a unique set of facts.[15] Put another way, defendants argue that the class of one created by the supplement does not exclude any

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14. Paramus' appeal pursuant to the rebate statute is currently pending in the Tax Court. The Tax Court, J. Hopkins, recently declared the supplement to the rebate statute unconstitutional. 2 *N.J. Tax* 479 (Tax Ct. 1981).

15. It is important to remember that the size of the class is not relevant to the constitutional inquiry. *Clark v. Byrne*, 165 *N.J. Super.* 98, 397 *A.*2d 719 (Law Div. 1978), aff'd 165 *N.J. Super.* 16, 397 *A.*2d 685 (App. Div. 1979). The critical inquiry is the purpose behind the creation of a limited class, vis-a-vis similarly affected potential class members. The test is whether the statutory class has a logical and reasonable basis, free from artificiality and arbitrariness, embracing all and omitting none naturally falling into that category. *Koons v. Atlantic City, supra*, 134 *N.J. Law* at 332, 47 *A.*2d 589.

other taxing districts that may resemble (but in fact only superficially) the included member—Cedar Grove. This results, according to defendants from the unique traits inherent in Cedar Grove's status that, in the Legislature's view, required a "repair" of the then existing rebate statute in order to effectuate its underlying purpose. The appeal of defendants' argument disappears upon an analysis of this supplement in light of its ostensible purpose.

[16] A county is a creature of the State, *Clark v. Degnan*, 83 *N.J.* 393, 416 *A.*2d 816 (1980), and as such is necessarily subordinate to the State in terms of its financial affairs. *Camden v. Byrne*, 82 *N.J.* 133, 411 *A.*2d 462 (1980). In this State all constituent municipalities of a county contribute proportionately to the maintenance of their county government. This county tax contribution (sometimes erroneously called a "county tax") is based on the equalized valuation of real estate within the borders of constituent municipalities making up the respective counties. This equalization procedure is supervised by the county tax administrators and is achieved through the promulgation of an equalization table, *N.J.S.A.* 54:3-17, which, after confirmation by the county tax boards, is used to apportion the county contribution among constituent municipalities. *N.J.S.A.* 54:3-19. This county contribution is not exacted directly from the individual citizens of a municipality but is diverted from the collection of the local property tax by the municipal government.

[17] The rebate statute, putting aside the effect of the supplement, is an attempt to divert from one municipality the cost of maintaining state- or county-owned institutions that are used for public purposes, to constituent municipalities of a first class county having a population in excess of 800,000. The Legislature made a policy decision to spread the burden of servicing

said institutions over the region, according to county lines, in an obvious attempt to relieve these taxing districts in which the institutions are located. The apparent design of the rebate statute is essentially one of the apportionment of a share of local property taxes.

Thus, according to defendants, the Legislature by way of the supplement sought to alleviate the oppressive county tax contribution burden of certain Essex County municipalities by limiting the rebate statute to that county. In short, the purpose of the supplement was to effectuate the underlying purposes of the rebate statute. This argument is fallacious in two respects.

[18] Initially, the text of the supplement effectively deprives *any* municipality, even a municipality located in Essex County other than Cedar Grove, of ever receiving a rebate. The supplement states, in pertinent part:

> No taxing district which has not actually received a remission or a rebate . . . for any full year occurring prior to the effective date of this act [September 22, 1980], shall receive a remission or rebate under that section for the current tax year *or any other tax year whether occurring prior to or after the effective date of this act.* [Emphasis supplied]

This feature itself destroys the argument in support of the supplement. If the Legislature's purpose was to give some *intra* county relief to worthy municipalities in only Essex County, it defies common sense to expressly exclude such hard-pressed Essex County municipalities as Newark or East Orange.

Secondly, the diversion of county tax contributions to municipalities such as Cedar Grove actually *increases* the county tax burden of other constituent municipalities not receiving a rebate. Thus, by virtue of certain municipalities receiving said rebate, a hard-pressed taxing district is further burdened by a proportionate increase in its county tax contribution.[16]

Consequently, the classification cannot be said to result from a rational basis. It clearly attempted to benefit a class closed to other excluded members which are similarly situated in accordance with the unsupplemented rebate statute. No conceivable rationale can be tendered to justify this retroactive deprivation of class membership. While the Legislature could have simply repealed the rebate act, an action which would have affected every single class member in a uniform, consistent manner, it sought in this case to nonsuit an otherwise qualified rebate candidate merely on the basis of caprice.

The defendants claim that the recent case of *McKenney v. Byrne, supra,* sufficiently analogous to control the instant matter. There various individuals attacked the apportionment scheme of the Public Utilities Gross Receipts Tax Act (*N.J.S.A.* 54:30A-49

16. These observations are fully supported by the record herein by virtue of the testimony of the Bergen County Tax Administrator, who fully explained the mechanics of county tax contributions and apportionment. He vividly demonstrated the impact on other constituent taxing districts that bear the burden of a rebate to a sister taxing district. He testified that the county tax administrator simply takes the equalized value of real estate for the entire county and strikes it against the budget supplied to him by the Board of Freeholders in order to get a tax rate. He then takes the tax rate and applies it uniformly to the equalized valuation of real estate for each taxing district. A rebate would decrease that taxing district's county tax contributuion in ensuing years and would obviously result in a proportionate increase of the county tax contribution of the remaining taxing districts within that county.

et seq.) and specifically the apportionment mandate found in *N.J.S.A.* 54:30A-54(b) which apportions a 7½% tax on gross receipts from business "over, on, in through or from its lines or mains" based on scheduled property located within the taxing district. Thus, taxing districts without such scheduled property obviously do not share to the same extent as do other taxing districts which are "rich" in such scheduled property.[17] The Supreme Court denied relief based primarily on an equal protection analysis because there were conceivably sound rationales for this allocation scheme. *Id.* 82 *N.J.* 317-320, 412 *A.2d* 1041. It further held:

> Plaintiff's contention that the allocation provision, *N.J.S.A.* 54:30A-61, is a special or local law violative of the New Jersey Constitution (1947), Article IV, Sec. 7, Par. 9(6) and 9(13), because it relates to taxation and regulates the internal affairs of municipalities, is without merit. The statute is not a special or local law because the classification is constitutionally reasonable, or within the group of characteristics which are sufficiently identifiable so that they constitute a class, and none has been excluded which should have been encompassed within the classification. See *Alfred Vail Mutual Association v. New Shrewsbury,* 58 *N.J.* 40, 48-49, 274 *A.*2d 801 (1971). [at 320, 412 *A.2d* 1041]

McKenney is obviously distinguishable since the court found sound bases for the legislation in question. The court specifically

17. Scheduled property is defined in *N.J.S.A.* 54:30A-50(d) and essentially is various capital improvements used in the processing and distribution of utilities to consumers.

stated the class created by the legislation did not exclude those who should have been included in the first instance. The *Alfred Vail* decision, cited in *McKenney,* is more closely analogous to the instant matter.

In *Alfred Vail Mut. Ass'n v. New Shrewsbury,* 58 *N.J.* 40, 274 *A.*2d 801 (1971), the Township of New Shrewsbury and the largest taxpayer therein attacked *L.* 1965, *c.* 175 (incorporated into *N.J.S.A.* 18:8-17.2 and superseded by *N.J.S.A.* 18A:13-23) which mandated that common school district costs be apportioned in certain common school districts upon the basis of the number of pupils per the constituent taxing districts, and not on the basis of the past method that was based upon the respective assessed valuations of real property within the taxing districts that composed the common school districts. In revising the apportionment scheme the Legislature classified such qualifying school districts in the following terms:

> First, at some point in its history, the school district must have been a consolidated school district comprised of exactly two municipalities. Second, after January 1, 1957, the school district, while it was still a consolidated district comprised of exactly two municipalities, must have joined in the formation of a regional high school district. Third, by subsequently regionalizing the consolidated school district for other school purposes, the school district must have ceased to operate as a consolidated school district, continuing instead as a regional school district. [at 44, n. 3, 274 *A.*2d 801].

In holding this provision to be special the court initially noted that "the Legislature is necessarily accorded broad discretion in

the area of permissible classification . . . [yet] the classifications, however, must be germane to the purpose of the enactment, resting on characteristics that substantially differentiate the school district included from those school districts excluded from the coverage of the statute." *Id.* 48-49, 274 *A.*2d 801. The essence of the determination that the legislation was special is contained in the following:

> Clearly, a classification based on the historical temporal order of regionalization and the chance that the school district is comprised of exactly two municipalities rather than two or more governmental units has no rational relationship to the purpose of the statute which is to equalize the financial burden on constituent members of regional school districts. [at 50, 274 *A.*2d 801]

While this case is not controlling, it persuasively demonstrates that a legislative class must have a reasonable nexus to the objects of the legislation. I am unable to find any conceivable rationale as to the classification inherent in the provision in question other than a capricious retroactive deprivation of the benefit of a rebate. I accordingly hold that the supplement is unconstitutional special legislation. *Accord Allendale Nursing Home, Inc. v. Allendale,* 141 *N.J. Super.* 155, 160-161, 357 *A.*2d 333 (Law Div. 1976), aff'd 149 *N.J. Super.* 286, 373 *A.*2d 714 (App. Div. 1977). To say that the Legislature intended to supplement the spirit and letter of the rebate statute with this provision is to ignore substance over form. It simply cannot be said that the purpose of this supplement effectuates the underlying purpose of the rebate statute itself.

Still to be considered is the constitutionality of the rebate statute *per se,* but we must first address the issue regarding the

severability of the supplement from the main body of the rebate statute.

[19] The rule of severability was succinctly set forth in *Affiliated Distillers Brands Corp. v. Sills*, 60 *N.J.* 342, 289 *A.*2d 257 (1972):

> Severability is a question of legislative intent. That intent must be determined on the basis of whether the objectionable feature of the statute can be excised without substantial impairment of the principle object of the statute. 56 *N.J.* at 265, 265 *A.*2d 809; *N.J. Chapter Am. I.P. v. N.J. State Board of Professional Planners*, 48 *N.J.* 581, 593, 227 *A.*2d 313 appeal dismissed and cert. denied, 389 *U.S.* 8, 88 *S. Ct.* 70, 19 *L. Ed. 2d* 8 (1967); *Angermeier v. Boro. of Sea Girt*, 27 *N.J.* 298, 311, 142 *A.*2d 624 (1958). To justify severance of a part of a statute "there must be such a manifest independence of the parts as to clearly indicate a legislative intention that the constitutional insufficiency of the one part would not render the remainder inoperative." *Washington National Insurance Company v. Board of Review*, 1 *N.J.* 341, 361, 94 *A.*2d 482 (1953). [at 345-346, 289 *A.*2d 257]

The supplement cannot be construed as a substantive alteration of the rebate statute. It was, indeed, supplementary in the truest sense of that word and I accordingly hold it to be severable from the rebate provision in its unsupplemented form. The purported underlying intent of the rebate statute simply indicates that the level of interdependence that is necessary for

this court to find the whole scheme inseparable is not present. For that matter, the conceded intent of the supplement likewise does not indicate that level of interdependence necessary for a finding of inseparability.

[20, 21] Defendants initially mounted a constitutional attack on the main body of the rebate statute based on several state constitutional provisions and the Fourteenth Amendment to the United States Constitution. The state constitutional provisions invoked are Art. IV, § VII, par. 9, and Art. VIII, § I, par. 1 and par. 2. The cited provisions found in Art. VIII are clearly inapplicable since they concern uniformity in taxation in terms of assessment and exemptions. The clear import of these provisions is to address taxation in terms of mandating uniformity so that individual taxpaying entities are not accorded preferential treatment. *See Bonnet v. State, supra,* 155 *N.J. Super.* at 531-534, 382 *A.*2d 1175. Counties are not taxpayers; they merely remit taxes paid by individual taxpayers so that these provisions are not controlling. *See Clifton v. Passaic Cty. Bd. of Taxation,* 114 *N.J. Super.* 253, 276 *A.*2d 148 (App. Div. 1971), aff'd, *per curiam* 60 *N.J.* 185, 287 *A.*2d 449 (1971), and *Jersey City v. Martin,* 126 *N.J. Law* 353, 19 *A.*2d 40 (E. & A. 1941).

The same cannot be said for the special legislation clause found in Art. IV. At least two clauses within paragraph 9 are arguably implicated. Paragraph 9 provides in pertinent part that "the Legislature shall not pass any private, special or local law"; it then proceeds to enumerate the forbidden subjects. Clause 6 forbids such laws "relating to taxation or exemption therefrom," while clause 13 forbids such laws "regulating the internal affairs of municipalities formed for local governments and counties, except as otherwise in this Constitution."

Defendants argue that the rebate statute classifies potential beneficiaries of a rebate in terms of an invalid population and acreage requirement. They argue that a special class is created, clearly demonstrating that the rebate statute is a special law passed only for the purposes of according arbitrary, preferential treatment to certain municipalities. In short, they contend the classification is too restrictive, bearing in mind the underlying purpose of the statute.

In assessing legislative classifications it has been said repeatedly that the Legislature is accorded extremely broad discretion with respect to tax matters. *Lehnhausen v. Lake Shore Auto Parts*, 410 *U.S.* 356, 93 *S. Ct.* 1001, 35 *L. Ed.* 2d 351 (1973); *Bonnet v. State* and *Jersey City v. Martin*, both *supra*. It is virtually beyond question that the Legislature can exercise this broad discretion in a particularly liberal fashion in matters of the apportionment of tax revenue. *McKenney v. Byrne, supra*, and *Meadowlands Reg'l Redevelop. Agency v. State*, 63 *N.J.* 35, 304 *A.* 2d 545 (1973), app. dism. 414 *U.S.* 991, 94 *S. Ct.* 343, 38 *L. Ed.* 2d 230 (1973); *but see Jersey City v. Zink*, 133 *N.J.L.* 437, 44 *A.* 2d 825 (E. & A. 1945), *cert.* den. 326 *U.S.* 797, 66 *S. Ct.* 493, 90 *L. Ed.* 485 (1946). Nonetheless, defendants contend that this statute, which is in effect a scheme of apportioning the costs of county government, contains improper classification of population and land area and consequently is an unconstitutional diversion of one taxing district's revenue to another. Defendants place great reliance on *Jersey City v. Zink, supra*, a case which is very similar to the instant matter.

In *Jersey City* certain class 2 railroad taxpayers had defaulted on their local property taxes but paid into the state treasury the principal and interest due thereon. Jersey City made demand on the state for the interest and the principal based on such property

situated in Jersey City. The State paid over the principal but not the interest. Roughly six months later the Legislature passed *L.* 1945, *c.* 4, 5, 6 and 34, which made specific appropriations of the interest paid according to the already disbursed principal. According to these provisions, certain sums were to be paid to taxing districts which had already received distribution of the delinquent principal; other sums were to be paid to various school districts in the State and, finally, sums were to be paid to every municipality in this State. The last two classes of beneficiaries were to receive the funds without consideration of whether or not they too had class 2 railroad property therein.

The Court of Errors and Appeals held in a 8-5 decision that this legislative scheme was unconstitutional, special legislation violative of Art. IV, § VII, par. 11, of the New Jersey Constitution (1844).[18] The court initially observed that class 2 railroad property is included in the aggregate valuation of railroad property in the respective taxing districts and is, of course, used to strike a tax rate. Furthermore, it recognized that

> The fixing of a rate is an essential part of the taxing power. A local tax rate in a taxing district of this state is determined annually and increases or decreases in approximately direct proportion to the cost of local government. The principles of taxation and representation go together which applies here. *Van Cleve v. Passaic Valley Sewage Commission, supra* (71 *N.J.L.* at p. 584, 60 *A.* 214), has genesis in the right of a citizen to choose

18. This provision is the source for Art. IV, § VII, par. 9 of the New Jersey Constitution (1947), which, of course, is the provision alleged to be controlling herein.

> by ballot he officers of the taxing district for whose public purposes he is taxed and a citizen can thereby control the expenditures and cost of government in that district. *Van Riper v. Parsons*, 40 *N.J. Law* 1 (at p. 5). [*Id.* at 446, 44 *A.* 2d 825]

The crux of the holding is as follows:

> Under this provision of the Constitution, the state may not arbitrarily take funds from one municipality and allot them to another, nor arbitrarily require a group of municipalities to contribute from their tax revenues to the support of the state government and absolve others from the same obligation, especially where the diverted funds are derived from assessment levied upon local properties. Nor may the state call upon the municipalities, or some of them, to turn it over, for state purposes, or for disbursement to other municipalities, monies raised by local taxation upon a specified class of property, such as farmlands, public utilities or any other special class, for thereby would be created a grossly disproportionate sharing of a common obligation and some would escape it entirely.
>
> [moreover] The sole criteria, in these statutes, of the obligation to contribute monies for general state or state school purposes is the legal right to receive tax monies from a *particular* kind of assessed ratable and all municipalities which are not in this category are exempt from the obligation of making contributions. [at 447-448, 44 *A.* 2d 825]

Opinion of Tax Court of New Jersey

While the language of this case appears to control the instant matter it is important to note that central to the holding was the premise that the interest calculated in accordance with the principal in default was deemed to be the property of each plaintiff-taxing district therein. *Id.* at 441-444, 44 *A.* 2d 825. The dissent of Justice McGeehan eloquently called this proposition into question (at 456-460, 44 *A.* 2d 825) and further noted:

> The importance of the constitutional question of the relative rights of the Judiciary and the Legislature involved in this case, far transcends the admitted importance of the case itself to the municipalities in the state. Even though the equities may be all on one side in a given case, these equities may not be put in the scale to increase the measure of judicial power. It is the duty of the Judiciary to see that no one department of government encroaches on the prerogatives of another. 16 *C.J.S.* 430. By the same token, the judicial branch of the government cannot encroach on or interfere with the legislative branch in the proper exercise of its constitutional powers either by enacting, amending or nullifying laws or by judicial construction. 16 *C.J.S.* 446. It is the Legislature and not to the courts that our constitution has granted the power to make appropriations and except for constitutional inhibitions in the power, the Legislature is answerable to the people alone for any unjust or unwise exercise of its power. In matters of appropriation particularly, the courts never should read into any appropriation act an inclusion not clearly required. It must be remembered that an error committed in extending

> an appropriation act by judicial construction cannot be remedied, while an error on the part of the court in restricting the effect of any appropriation act is always open to correction by the Legislature. [461-462, 44 *A.* 2d 825]

This case has caused many subsequent decisions to limit the holding of it to the facts found therein. *See, e.g., Meadowlands Reg'l Develop. Agency v. State,* 112 *N.J. Super.* 89, 110-113, 270 *A.* 2d 418 (Ch. Div. 1970), aff'd 63 *N.J.* 35, 304 *A.* 2d 772; *McKenney v. Byrne, supra,* 147 *N.J. Super.* 158, at 166, 370 *A.* 2d 897 (Law Div. 1976); *Clark v. Byrne, supra,* 165 *N.J. Super.* at 111, 397 *A.* 2d 719, and finally, *Camden v. Byrne, supra,* 82 *N.J.* at 157, 411 *A.* 2d 462, where the court implied that the *Jersey City* case was decided on less than solid grounds.

The *Camden* case recognized the tension between the *Jersey City* case and contemporary authority by stating that political subdivisions are necessarily subordinate to the State, so that, "They may complain of the financial niggardliness of their parent, but they are in no position to defy its authority. *See Glassboro v. Byrne, supra,* 141 *N.J. Super.* at 24, 357 *A.* 2d 65." 82 *N.J.* at 157-158, 411 *A.* 2d 462. The vitality of this case remains in its recognition that certain taxing districts having a particular ratable were coerced into contributing public funds (interest ineluctably linked to tax principal) for the benefit of the *entire State* by virtue of a special allocation scheme. There was simply no reason to find any reasonable basis for the diversion of such funds; purely and simply, it was the confiscation of municipal revenue derived from local property taxes. The bedrock of the case was the principle that tax revenue generated within the borders of a taxing district cannot be "enjoyed" by other entities not proportionately sharing in the governmental burden of that taxing district.

Defendants are simply saying that the Legislature cannot demand that sister taxing districts support another taxing district, in terms of a rebate of the county tax contribution, because of the presence of 200 or more acres of a state or county institution. The court disagrees. The state or county institutions "used for public purposes" are undeniably maintained for the welfare of the public in general. The Legislature, in its wisdom, declared that taxing districts burdened with the cost of servicing such institutions should be recompensed along county lines. This court is not authorized to pass on the wisdom of such a scheme nor am I able to state that such legislation is arbitrary or irrational. *Accord Meadowlands Reg'l Redevelop. Agency v. State, supra,* 63 *N.J.* at 44, 304 *A.* 2d 545. Compensation through direct state payments may be a better alternative, but this court is constrained to hold that there is a conceivable rational basis for the statute as it exists. This conclusion, however, still does not answer the real alleged defect in the rebate statute which was not fully articulated by the parties herein.

The root question concerns the condition precedent within the rebate statute which accords relief to qualifying municipalities only in counties of the first class. This question concerns the excluded class of potential beneficiaries of the rebate statute by virtue of a county population requirement vis-a-vis the legitimate purpose of reapportioning the cost of bearing a substantial institution that is used for public purposes. In other words, the alleged excluded classes are those municipalities having such institutions which are simply not located in first class counties.[19]

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19. *N.J.S.A.* 40:17-2 provided: "Counties of the first class shall consist of all counties having a population of exceeding 600,000; counties of the second class, except as herein otherwise provided, shall consist of all counties having a population of not less than 200,000 nor more than 600,000 counties of the third class, except as herein otherwise provided, shall consist of all counties

(Cont'd)

The leading case of *Koons v. Atlantic City, supra,* set forth the controlling principle regarding population requirements:

> Thus, population forms a valid basis of classification in statutes relating to the structure and machinery of municipal government only "where population bears a reasonable relation to

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(Cont'd)
having a population of not less than 50,000 nor more than 200,000; counties of the fourth class, except as herein otherwise provided, shall consist of all counties having a population of less than 50,000; counties of the fifth class shall consist of all counties bordering on the Atlantic Ocean and having a population exceeding 100,000; counties of the sixth class shall consist of all counties bordering on the Atlantic Ocean and having a population not exceeding 100,000."

Repealed by *N.J.S.A.* 40A:6-1 which provided: "For legislative purposes, counties are classified as follows based upon their population as ascertained by the most recent Federal decennial census:

a. First class—counties having a population of more than 600,000;

b. Second class—counties having a population of not less than 200,000 but not more than 500,000 except such counties bordering on the Atlantic Ocean;

c. Third class—counties having a population of not less than 50,000 but not more than 200,000 except such counties bordering on the Atlantic Ocean;

d. Fourth class—counties having a population of less than 50,000 except such counties bordering on the Atlantic Ocean;

e. Fifth class—counties bordering on the Atlantic Ocean having a population of not more than 100,000.

f. Sixth class—counties bordering on the Atlantic Ocean having a population of not more than 100,000."

L. 1979, *c.* 181, § I, eff. August 29, 1979.

> the necessities and proprieties of the various grades of municipal government." *Lewis v. Jersey City, supra.* In applying the general rule adverted to, Chief Justice Depue declared that the classification is exclusive unless it is founded on "some characteristic or peculiarity plainly distinguishing the places included from those excluded and making the legislation fit and appropriate to those included and inappropriate to those which are omitted. It must embrace all and exclude none, whose condition and wants render such legislation equally appropriate to them as a class." And in *Lowthorp v. Trenton,* 61 *N.J. Law* 484, 40 *A.* 442, aff'd. 62 *N.J.L.* 795, 44 *A.* 755, 756, the Court of Errors and Appeals held that "population bears a reasonable relation to the subject matter of the legislation . . . only when such legislation deals with the structure or machinery of municipal government. Classification on the basis of population for any other purpose than those mentioned is illusive and unsubstantial and consequently is within the constitutional prohibition." [134 *N.J.L.* at 333-334, 47 *A.* 2d 589]

Accord, Sarner v. Union Tp., 55 *N.J. Super.* 523, 151 *A.* 2d 208 (Law Div. 1959).

[22, 23] The Legislature is unquestionably vested with the authority to classify the political subdivisions of the State in terms of population so that the State's populous counties, and municipalities contained therein, may be treated more favorably than less populous counties as long as the legitimate purpose of the legislation reasonably justifies such a preference. *Bergen Cty.*

Sewage Auth. v. Little Ferry, 7 *N.J. Super.* 213, 72 *A.* 2d 886 (App. Div. 1950). However, I find no such justification here. For example, in 1977, according to the figures tendered by the Attorney General, such second class counties as Camden, Mercer, Middlesex, Morris, Passaic and Union, as well as the fifth class counties of Monmouth, Ocean and Atlantic, have county tax contributions as follows:

Camden	$60,222,289.78
Mercer	38,279,873.25
Middlesex	62,159,256.08
Morris	35,696,729.32
Passiac	38,783,537.48
Union	44,752,145.81
Monmouth	44,892,585.18
Ocean	26,454,663.75
Atlantic	20,603,040.50

Noting that the total contribution of the 70 municipalities to Bergen County was $64,408,681.87, it can be readily seen that the amount of contribution cannot serve as a basis for excluding municipalities in less populous counties. Furthermore, it is entirely possible, and perhaps probable, that the proportionate burden in municipalities located in non-first class counties having in excess of 200 acres of county or state property may even be greater than Mahwah, Paramus or Cedar Grove. While the further exclusion of those municipalities in first class counties having 800,000 or less people is even more invidious,[20] I find that the general applicability to first class county municipalities alone bears absolutely no rational relationship to the purpose of the rebate statute. The denial of the relief from the impact of servicing public property to taxing

20. This provision excludes Hudson County municipalities. In all years in question it was a first class county, but its population was less than 800,000 people.

districts in other counties clearly is an attempt to construct a restrictive class bearing no relationship to the machinery or structure of municipal or county government. The clear purpose underlying this statute is not served by the exclusion of the members of a class that should have been included in the first instance. Consequently, I hold the rebate statute to be special legislation and thus violative of the constitutional command found in Art. IV, § VII, par. 9.

For the foregoing reasons the claims of Mahwah for all years in question are dismissed. The Clerk of the Tax Court shall enter judgment accordingly.

PRETRIAL ORDER FILED NOVEMBER 13, 1979

TAX COURT OF NEW JERSEY
DOCKET NOS. M 937-75-1, M 949-76,
M 980-77, M 1002-78, M 1014-79

TOWNSHIP OF MAHWAH,

Plaintiff,

vs

BERGEN COUNTY BOARD OF TAXATION,

Defendant.

CIVIL ACTION
STATE TAX
PRETRIAL ORDER

1. NAME OF TAX AND APPLICABLE STATUTE UNDER WHICH TAX WAS IMPOSED:
   (a) NJSA 54:4-5 — rebate
   (b) NJSA 54:4-3.3 — exemption

2. YEAR(S) OR PERIOD(S) OF ASSESSMENT OR YEAR(S) OR PERIOD(S) FOR WHICH REFUND IS CLAIMED (if transfer inheritance tax state date of death of decedent): 1972 to 1978, inclusive.

3. AMOUNT OF REBATE CLAIMED: Either ½ or ¾ of county taxes apportioned to the Borough of Mahwah for the 1974 to 1978 tax years.

4. AMOUNT OF ASSESSMENT OR TAX IMPOSED WHICH IS CONTESTED OR FOR WHICH A REFUND IS SOUGHT (by taxable periods): See No. 3

5. FACTUAL CONTENTIONS: See attached. (No pretrial memoranda received from Fairview, Hackensack, Teterboro, Bergen County).

6. LEGAL CONTENTIONS: See attached. (No pretrial memoranda received from Fairview, Hackensack, Teterboro, Bergen County).

7. ADMISSIONS AND STIPULATIONS: Bergen County population exceeds 800,000.

8. EXHIBITS: Aerial photographs and tax maps of premises in question.

9. EXPERT WITNESSES: For Plaintiff — See plaintiff's pretrial memorandum, No. 9.

For Defendant — Personnel from county engineer's office.

10. AMENDMENTS TO PLEADINGS: None

11. BRIEFS: To be filed on or before February 11, 198O, including therein constitutionality of NJSA 54:4-5, statute of limitations, whether NJSA 54:4-3.3 is applicable to all years, and such other matters as may be pertinent.

12. ESTIMATED LENGTH OF TRIAL: One week

13. ANY OTHER FACTS OR ISSUES EITHER PARTY BELIEVES SHOULD BE RAISED.

None.

14. TRIAL DATE: February 25, 1980

15. LEGAL ISSUES RAISED BY PLEADINGS WHICH ARE ABANDONED OR OTHERWISE DISPOSED OF: None.

16. SPECIFICATIONS OF ISSUES TO BE DETERMINED AT TRIAL:

(a) Interpretation and applicability of NJSA 54:4-5 and NJSA 54:4-3.3

(b) Constitutionality of NJSA 54:4-5

(c) Statute of limitations

(d) All factual issues pertaining to plaintiff's claims

17. OTHER:

(a) All discovery to be completed by January 14, 1980.

(b) Plaintiff shall furnish copies of petitions to the County Board and Division of Tax Appeals and judgments of the County Board to all parties within thirty days.

(c) Trial Counsel:

E. Carter Corriston - Mahwah

Harry Haushalter, Deputy Attorney General - Bergen County Board of Taxation

James Checki - Bergen County

Anthony Andora - Cresskill, Closter, Fort Lee, Demarest and Little Ferry

Jack Ballan - Fair Lawn

Joseph P. Winberry - Carlstadt

Stanley Wyrzyskowski - Fairview

Jacob Schneider or Peter D. Ciancia - Teaneck and Alpine

James J. Dooley or David B. Bole - Teterboro and Allendale

Stephen J. Moses - Hackensack

s/ John F. Evers
JUDGE, TAX COURT
OF NEW JERSEY

s/ Brian T. Campion
Attorney for Plaintiff

s/ Harry Haushalter
Attorney for Bergen County
Board of Taxation

s/ John Langan, Jr.
Attorney for Bergen County

s/ Anthony D. Andora
Attorney for Cresskill,
Closter, Fort Lee,
Damarest, Little Ferry

s/ Jack Ballan
Attorney for Fair Lawn

s/ Joseph P. Winberry
Attorney for Carlstadt

s/ Stanley Wyrzyskowski
Attorney for Fairview

s/ Peter D. Ciancia
Attorney for Teaneck, Alpine

s/ David B. Bole
Attorney for Teterboro,
Allendale

s/ Stephen J. Moses
Attorney for Hackensack

Dated: November 13, 1979

5 and 6. Factual and Legal Contentions:

The County of Bergen is a County of First Class housing a population of 800,000. During the subject years, county and state institutions owned and occupied lands in the Township of Mahwah in excess of 200 acres. The Township of Mahwah is, therefore, entitled to a tax rebate under the provisions of N.J.S.A. 54:4-5.

Alternatively, if it is determined that said lands are not owned and occupied by said institutions, the Township submits that the properties are not being used for a public use and that the properties should not qualify for an exemption as permitted by N.J.S.A. 54:4-3.3.

5-6. FACTUAL AND LEGAL CONTENTIONS:

For the tax years 1975 to 1978, inclusive, the plaintiff, the Borough of Mahwah, has appealed the determination by the Bergen County Board of Taxation that Mahwah was not entitled to any rebate of county taxes under N.J.S.A. 54:4-5. Such rebate would have been reflected on the table of aggregates annually adopted by the County Board pursuant to N.J.S.A. 54:4-49 to 52. The granting of the rebate would have concomitantly necessitated that the other municipalities in Bergen County proportionately assume the additional costs of the county budget resulting from any rebate of Mahwah's proportionate share of such taxes.

N.J.S.A. 54:4-5 provides that:

> "A taxing district in a county of the first class having in excess of 800,000 population in which

there has been located a State or county institution other than a park commission or lands owned or occupied by a park commission occupying more than 200 acres and not in excess of 400 acres of land, in the aggregate, shall have remitted or rebated by the county treasurer a sum equal to ½ of the county tax rate applied to the entire amount of ratables remaining subject to taxation. A taxing district in such a county of the first class in which there has been located a State or county institution other than a park commission or lands owned or occupied by a park commission occupying in excess of 400 acres of land, in the aggregate, shall have remitted or rebated by the county treasurer a sum equal to ¼ of the county tax rate applied to the entire amount of ratables remaining subject to taxation.''

The statute requires that the following criteria must be met by a municipality in order to qualify for the rebate:

1. The taxing district must be located in a county of the first class having an excess of 800,000 population;

2. There must be property located within the municipality which is owned by a state or county institution other than a park commission or lands owned or occupied by a park commission;

3. Such lands must consist of more than 200 acres and not in excess of 400 acres; in the aggregate, in order to qualify for a rebate of ½ of the county taxes;

4. Such lands must consist of more than 400 acres, in the aggregate, in order to qualify for a rebate of ¾ of the county taxes.

In *County of Bergen v. Borough of Paramus*, 79 N.J. 302 (1979) and *Borough of Paramus v. Capello*, 66 N.J. 1 (1974), the Supreme Court of New Jersey established the relevant standards that must be met by a municipality in order to qualify for either of the two rebates (½ or ¾ of county taxes). The court noted that mere ownership of the property by the appropriate public entity is not sufficient. The court defined the term "occupying" as used in the statute to connote ". . . actual governmental use". *Borough of Paramus v. Capello, supra*, 66 N.J. at 5. Such use must be reflected in a " . . . present intent to devote the property to a public use within a reasonable length of time." *County of Bergen v. Borough of Paramus, supra*, 79 N.J. at 308.

The Bergen County Board of Taxation, in determining that the plaintiff did not qualify for the rebate for the years in question under N.J.S.A. 54:4-5, found that an insufficient amount of acres of public land were actually used for a public purpose. Said determination was based on a factual record presented at various hearings regarding this matter.

3-4. FACTUAL AND LEGAL CONTENTIONS of the Borough of Cresskill:

The municipality contends that the County of Bergen owns and occupies in excess of two hundred (200) acres in the Township of Mahwah. At the hearing before the County Board, the municipality did not prove such occupancy and, therefore, the taxing district is not entitled to the rebate which it seeks under N.J.S.A. 54:4-5.

100a

TABULATION OF STATE-OWNED PROPERTY IN NEW JERSEY

PT-3
JANUARY, 1973

STATE-OWNED REAL PROPERTY IN NEW JERSEY



NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS

Tabulation

STATE OF NEW JERSEY
William T. Cahill, *Governor*

DEPARTMENT OF COMMUNITY AFFAIRS
Lawrence F. Kramer, *Commissioner*

DIVISION OF STATE AND REGIONAL PLANNING
Planning Services Section

About this Tabulation

This tabulation and accompanying map is the third in the current series prepared by the Division of State and Regional Planning and supersedes earlier versions (PBT-7 through PBT-12) prepared during the mid-1960's.

The information contained in the tabulation presents the results of a survey conducted by the Division of State and Regional Planning of lands owned by the State of New Jersey as reported by each land holding agency within State Government. Information on riparian lands and highway rights-of-way are not included since this data has not been reported or is not available at this time. The results of this survey were reviewed by each agency and department concerned.

A summary of State owned real property listed by agency and by county precedes the detailed breakdown of information. A locational map, PM-3, at a scale of one inch equals eight miles, is included inside the back cover. Total real property acreage for each agency is shown in the "total" column on the same line as the agency title. (For example, total acreage for the Department of Environmental Protection is 368,640.3 acres, for the Division of Water Resources, 10,099.6 acres, etc.). A new coding system

has been devised for listing the various properties. This combines the Planning Division Code Number and the State Atlas Sheet Number used in the earlier PBT series into a single code number. S-EPW-24.1, for example, indicates the following: S = State, EPW = Department of Environmental Protection, Division of Water Resources, 24-1 = the first Water Resources property on Atlas Sheet No. 24. This coding system will be used in listing other categories of public properties in forthcoming planning tabulations.

The inventory of State owned real property is maintained by the Division of State and Regional Planning in accordance with Section IV of the procedures authorizing the State Real Property Review System, providing for an ongoing monitoring of all acquisions, disposals, and changes in usage of State properties.

SUMMARY OF STATE-OWNED REAL PROPERTY IN NEW JERSEY AS OF JANUARY, 1973

PLANNING CODE	TOTALS BY DEPARTMENT	AREA IN ACRES	PAGE NO.
	Department of Law and Public Safety	380.3	34
S-LSP-	Division of State Police	143.8	34
S-LMV-	Division of Motor Vehicles	236.5	36
S-T-	Department of the Treasury	56.7	39
S-D-	Department of Defense	797.3	25
	Department of Environmental Protection	368,193.1	1
S-EPM-	Division of Marine Services	71.2	13
S-EPW-	Division of Water Resources	10,099.6	1
S-EPFG-	Division of Fish, Game & Shell Fisheries	129,588.9	8
S-EPP-, S-EPF-	Division of Parks and Forestry	228,433.4	2
S-E-	Department of Education	116.7	24
S-HE-	Department of Higher Education	3,688.7	23
S-DOT-	Department of Transportation	411.9	28
	Department of Institutions & Agencies	13,245.9	17
S-IH-	Division of Mental Health & Hospitals	4,886.3	17
S-IR-	Division of Mental Retardation	3,224.5	18
S-IC-	Division of Correction & Parole	4,417.9	20
S-ICPS-	Division of Community & Professional Services	670.4	21
S-IYFS-	Division of Youth & Family Services	46.8	22
	TOTAL*	386,890.6	

*Exclusive of riparian lands and highway rights-of-way

*Not including 0.5 acres owned by State of New Jersey in the State of Maryland

TOTALS BY COUNTIES	AREA IN ACRES
Atlantic	25,804.6
Bergen	1,663.4
Burlington	108,105.6
Camden	16,837.1
Cape May	28,946.2
Cumberland	41,033.3
Essex	318.7
Gloucester	4,691.8
Hudson	317.8
Hunterdon	10,354.3
Mercer	3,921.9
Middlesex	2,647.1
Monmouth	10,069.9
Morris	8,062.0
Ocean	49,094.9
Passaic	11,385.6
Salem	6,951.3
Somerset	3,686.9
Sussex	44,220.0
Union	168.5
Warren	8,609.7
TOTAL*	386,890.6

STATE OWNED REAL PROPERTY IN NEW JERSEY

PLANNING DIVISION CODE NO	NAME OF FACILITY	YEAR ESTAB	LOCATION		ACREAGE		REMARKS
			COUNTY	MUNICIPALITY	SUB-TOTAL	TOTAL	
DEPARTMENT OF ENVIRONMENTAL PROTECTION						368,193.1	
Division of Water Resources						10,099.6	
S-EPW-24.1	Round Valley Reservoir	1956	Hunterdon Hunterdon Hunterdon	Clinton Twp. Lebanon Boro Readington Twp.	3,989.0 9.0 4.7	4,002.7	Water supply for the Northern Metropolitan Area Recreational Activities to be developed by the Bureau of Parks & Recreation
S-EPW-24.2	Spruce Run Reservoir	1959	Hunterdon Hunterdon Hunterdon Hunterdon	Union Twp. Lebanon Twp. Clinton Twp. Clinton Town	1,447.9 65.4 609.7 1.5	2,124.5	Water supply for the Raritan Valley
S-EPW-24.3	South Branch Pumping Station Force Main	1962	Hunterdon Hunterdon	Clinton Twp. Franklin Twp.	88.4 14.6	103.0	Pumping Stations for Round Valley Reservoir
S-EPW-24.4	Hackettstown Reservoir	Inc.*	Warren Sussex Morris	Allamuchy Twp. Bryam Twp. Mt. Olive Twp.	13.5 268.3 165.5	447.3	Proposed Water supply and Recreational Area in process of acquisition
S-EPW-25.1	Six Mile Run Reservoir	Inc.*	Somerset	Franklin Twp.	1,211.4	1,211.4	Water supply-being acquired 753.9 acres. Re-assigned from Millstone River Park
S-EPW-25.2	Raritan Confluence Reservoir	Inc.*	Somerset	Hillsborough Twp.	0.0	0.0	In process of Acquisition
S EPW-27.1	Delaware & Raritan Canal	1937	Hunterdon Mercer Somerset Middlesex	Too numerous to list	192.0 713.0 495.0 83.0	1,483.0	Industrial Water System and Informal Recreation
S-EPW-28.1	South River Tidal Dam "Crab Island"	Inc.*	Middlesex Middlesex Middlesex	South River Boro East Brunswick Twp. Sayreville Boro	0.0 0.0 14.7	14.7	In process of acquisition, map for location of 14.7 ac. not available
S-EPW-29.1	Manasquan Reservoir	Inc.*	Monmouth	Howell Twp.	713.0	713.0	In process of Acquisition

*Incomplete

STATE OWNED REAL PROPERTY IN NEW JERSEY

PLANNING DIVISION CODE NO.	NAME OF FACILITY	YEAR ESTAB	LOCATION		ACREAGE		REMARKS
			COUNTY	MUNICIPALITY	SUB-TOTAL	TOTAL	
Division of Parks & Forestry						228,433.4	
Bureau of Parks						46,921.4	
S-EPP-21.1	Swartswood	1914	Sussex	Hampton Twp. Stillwater Twp.	443.3 809.7	1,253.0	Swartswood Lake - 520 acres Little Swartswood Lake 82.47 acres
S-EPP-22.1	High Point	1923	Sussex	Montague Twp. Vantage Twp.	10,727.6 1,668.0	12,395.6	
S-EPP-22.2	Greenwood Lake	1923	Passaic	West Milford Twp. Ringwood Boro	2,058.4 508.8	2,567.2	
S-EPP-22.3	Cranberry Lake	1925	Sussex	Byram Twp.	199.0	199.0	
S-EPP-22.4	Farny	1943	Morris	Rockaway Twp.	802.5	802.5	
S-EPP-22.5	Wawayanda	1963	Sussex Passaic	Vernon Twp. West Milford Twp.	5,577.2 447.8	6,025.0	
S-EPP-22.6	Allamuchy	1966	Warren Sussex Morris	Allamuchy Twp. Byram Twp. Mt. Olive Twp.	22.0 962.1 843.2	1,827.3	Includes former Morris Canal Land & Water. 26 acres in Allamuchy Twp
S-EPP-23.1	Alpine Tract	1900	Bergen	Alpine Boro	350.0	350.0	350 Acres Leased to Palisades Inter-State Park
S-EPP-23.2	Ringwood Manor	1936	Passaic Passaic Bergen	Ringwood Boro West Milford Twp. Mahwah Twp.	2,096.9 109.3 905.2	3,111.4	
S-EPP-24.1	Stephens	1923	Warren Morris	Hackettstown Town Mt. Olive Twp.	133.4 88.5	221.9	
S-EPP-24.2	Voorhees	1929	Hunterdon Hunterdon	High Bridge Boro Lebanon Twp.	8.9 428.5	437.4	

STATE OWNED REAL PROPERTY IN NEW JERSEY

PLANNING DIVISION CODE NO	NAME OF FACILITY	YEAR ESTAB.	LOCATION		ACREAGE		REMARKS
			COUNTY	MUNICIPALITY	SUB-TOTAL	TOTAL	
S-EPP-24.3	Finesville	1968	Warren	Pohatcong Twp.	2.5	2.5	Undeveloped
S-EPP-25.1	Washington Rock	1913	Somerset	Green Brook Twp.	36.0	36.0	
S-EPP-25.2	Hacklebarney	1924	Somerset Morris Morris Hunterdon	Bedminster Twp. Chester Twp. Washington Twp. Tewksbury Twp.	16.9 375.8 174.3 1.7	568.7	
S-EPP-25.3	Hopatcong	1925	Sussex Morris	Hopatcong Boro Roxbury Twp.	15.1 92.3	107.4	All former Morris Canal & Banking Co. Land except 5.13 acres
S-EPP-25.4	Musconetcong	1925	Sussex Morris Morris Sussex	Byram Twp. Netcong Boro Roxbury Twp. Stanhope Boro	6.3 56.3 26.5 238.5	327.6	All former Morris Canal & Banking Company Property
S-EPP-25.5	Edison	1933	Middlesex	Edison Twp.	36.3	36.3	
S-EPP-25.6	Great Piece Meadows	1965	Essex Morris Morris	Fairfield Twp. Montville Twp. Lincoln Park Boro	112.8 41.1 38.1	192.0	Undeveloped
S-EPP-25.7	Millstone River	1965	Somerset Somerset Somerset Somerset Somerset	Franklin Twp. Hillsborough Twp. Manville Boro Millstone Boro Montgomery Twp.	600.8 101.3 4.0 27.4 58.3	791.8	Undeveloped, Re-assigned 753.9 acres of the Six Mile Run Reservoir area in Franklin Twp. to Water Policy and Supply
S-EPP-26.1	Liberty	1965	Hudson	Jersey City	280.5	280.5	Undeveloped
S-EPP-27.1	Washington Crossing	1913	Mercer	Hopewell Twp.	784.5	784.5	
S-EPP-27.2	Rancocas	1965	Burlington Burlington Burlington	Hainesport Twp. Mt. Laurel Twp. Westampton Twp.	439.1 111.9 505.2	1,056.2	Undeveloped

STATE OWNED REAL PROPERTY IN NEW JERSEY

PLANNING DIVISION CODE NO	NAME OF FACILITY	YEAR ESTAB	LOCATION		ACREAGE		REMARKS
			COUNTY	MUNICIPALITY	SUB-TOTAL	TOTAL	
S-EPP-27.3	Hawk Island	1966	Burlington	Delanco Twp.	2.3	2.3	Undeveloped
S-EPP-27.4	Bulls Island	1966	Hunterdon Hunterdon	Delaware Twp. Kingwood Twp.	73.1 6.5	79.6	
S-EPP-28.1	Princeton Battlefield	1946	Mercer	Princeton Twp.	51.0	51.0	Maintained as an historic site. Includes 3 acres leased from the Institute for Advanced Study
S-EPP-28.2	Duck Island	1964	Burlington Burlington Mercer	Bordentown City Bordentown Twp. Hamilton Twp.	0.4 57.1 122.7	180.2	Undeveloped includes 115 acres of former Delaware & Raritan Canal Feeder Lands
S-EPP-28.3	Pigeon Swamp	1967	Middlesex	South Brunswick Twp.	184.5	184.5	Undeveloped
S-EPP-29.1	Cheesequake	1938	Middlesex	Madison Twp.	1,000.9	1,000.9	
S-EPP-29.2	Allaire	1940	Monmouth Monmouth	Howell Twp. Wall Twp.	1,127.0 901.5	2,028.5	Includes 5.32 acres of Manasquan River Reservoir area in Howell Twp.
S-EPP-29.3	Sandy Hook	1962	Monmouth	Sea Bright Boro	10.1	10.1	
S-EPP-29.4	Monmouth Battlefield	1963	Monmouth Monmouth	Freehold Twp. Manalapan Twp.	253.1 1,121.4	1,374.5	Undeveloped
S-EPP-30.1	Fort Mott	1947	Salem	Pennsville Twp.	103.6	103.6	
S-EPP-31.1	Mount Laurel	1908	Burlington	Mt. Laurel Twp.	20.1	20.1	
S-EPP-31.2	Inskip	1966	Gloucester	Monroe Twp.	2,012.2	2,012.2	Undeveloped
S-EPP-33.1	Barnegat	1926	Ocean	Barnegat Light Boro	31.1	31.1	

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PLANNING DIVISION CODE NO.	NAME OF FACILITY	YEAR ESTAB	LOCATION		ACREAGE		REMARKS
			COUNTY	MUNICIPALITY	SUB-TOTAL	TOTAL	
S-EPP-33.2	Island Beach	1953	Ocean Ocean	Berkeley Twp. Ocean Twp.	2,200.0 801.6	3,001.6	
S-EPP-33.3	Double Trouble	1964	Ocean Ocean	Berkeley Twp. Lacey Twp.	558.7 1,055.3	1,614.0	
S-EPP-35.1	Parvin	1931	Salem	Pittsgrove Twp.	1,125.0	1,125.0	
S-EPP-36.1	Corson's Inlet	1963	Cape May Cape May	Ocean City Upper Twp.	205.3 135.4	340.7	
S-EPP-37.1	Cape May Point	1964	Cape May Cape May	Cape May Point Boro Lower Twp.	3.1 186.6	189.7	Undeveloped
S-EPP-37.2	Great Sound	1965	Cape May	Middle Twp.	198.0	198.0	Undeveloped

STATE OWNED REAL PROPERTY IN NEW JERSEY

PLANNING DIVISION CODE NO	NAME OF FACILITY	YEAR ESTAB	LOCATION		ACREAGE		REMARKS
			COUNTY	MUNICIPALITY	SUB-TOTAL	TOTAL	
Bureau of Forestry						176,300.1	
S-EPF-21.1	Stokes	1907	Sussex	Frankford Twp.	1,004.0		
			Sussex	Hampton Twp.	47.0		
			Sussex	Montague Twp.	2,625.2		
			Sussex	Sandyston Twp.	10,251.0		
			Sussex	Walpack Twp.	571.3		
			Sussex	Wantage Twp.	344.0	14,842.5	
S-EPF-21.2	Worthington Tract	1954	Warren	Blairstown Twp.	967.8		Includes the Columbia Lake Area of 76.65 acres with 21.95 acres of land and 54.70 acres of water
			Warren	Knowlton Twp.	456.6		
			Warren	Pahaquarry Twp.	4,405.4	5,829.8	
S-EPF-22.1	Norvin Green	1946	Passaic	Bloomingdale Boro	1,617.9		Undeveloped
			Passaic	Ringwood Boro	40.5		
			Passaic	West Milford Twp.	637.9	2,296.3	
S-EPF-22.2	Abram S. Hewitt	1951	Passaic	West Milford Twp.	1,890.0	1,890.0	Undeveloped
S-EPF-24.1	Jenny Jump	1931	Warren	Frelinghuysen Twp.	253.2		
			Warren	Hope Twp.	216.8		
			Warren	Independence Twp.	167.6		
			Warren	Liberty Twp.	315.4		
			Warren	White Twp.	165.1	1,118.1	Includes a portion of Mountain Lake
S-EPF-31.1	Wharton Tract	1955	Burlington	Bass River Twp.	2,734.7		
			Atlantic	Hammonton Town	8,310.6		
			Burlington	Medford Twp.	1,547.0		
			Atlantic	Mullica Twp.	2,897.5		
			Burlington	Shamong Twp.	16,615.8		
			Burlington	Tabernacle Twp.	10,159.3		
			Burlington	Washington Twp.	43,109.9		
			Camden	Waterford Twp.	13,771.8		
			Camden	Winslow Twp.	491.6	99,638.2	

STATE OWNED REAL PROPERTY IN NEW JERSEY

PLANNING DIVISION CODE NO	NAME OF FACILITY	YEAR ESTAB	LOCATION		ACREAGE		REMARKS
			COUNTY	MUNICIPALITY	SUB-TOTAL	TOTAL	
S-EPF-32.1	Bass River	1905	Burlington	Bass River Twp.	7,523.5		
			Ocean	Little Egg Harbor Twp.	1,546.5		
			Burlington	Woodland Twp.	30.0	9,100.0	
S-EPF-32.2	Lebanon	1908	Ocean	Manchester Twp.	9,309.3		
			Burlington	Pemberton Twp.	3,129.2		
			Burlington	Southampton Twp.	79.0		
			Burlington	Woodland Twp.	14,478.8	26,996.3	
S-EPF-32.3	Penn	1910	Burlington	Bass River Twp.	113.0		
			Burlington	Washington Twp.	3,253.0	3,366.0	
S-EPF-35.1	Belleplain	1928	Cape May	Dennis Twp.	7,865.7		
			Cumberland	Maurice River Twp.	1,522.6		
			Cape May	Upper Twp.	1,834.6	11,222.9	

STATE OWNED REAL PROPERTY IN NEW JERSEY

PLANNING DIVISION CODE NO	NAME OF FACILITY	YEAR ESTAB	LOCATION		ACREAGE		REMARKS
			COUNTY	MUNICIPALITY	SUB-TOTAL	TOTAL	
Division of Fish, Game & Shellfisheries						129,580.9	
S-DFG-21.1	Hainesville	1933	Sussex Sussex	Montague Twp. Sandyston Twp.	262.9 18.6	281.5	
S-DFG-21.2	Flatbrook	1938	Sussex Sussex	Sandyston Twp. Walpack Twp.	1,937.9 10.0	1,947.9	
S-DFG-21.3	Roy	1935	Sussex Sussex	Sandyston Twp. Walpack Twp.	143.0 144.1	287.1	
S-DFG-21.4	Walpack	1932	Sussex	Walpack Twp.	387.5	387.5	
S-DFG-21.5	Whittingham	1966	Sussex	Fredon Twp. Green Twp.	359.0 755.0	1,114.0	
S-DFG-22.1	Hamburg Mountain	1940	Sussex Sussex	Hardyston Twp. Vernon Twp.	2,324.4 1,312.2	3,636.6	
S-DFG-23.1	Wanaque	1958	Passaic	West Milford Twp.	1,412.6	1,412.6	
S-DFG-24.1	Hackettstown Hatchery	1912	Warren	Hackettstown Town	233.6	233.6	
S-DFG-24.2	Rockport Farm	1923	Warren	Mansfield Twp.	369.8	369.8	
S-DFG-24.3	Clinton	1934	Hunterdon Hunterdon	Bethlehem Twp. Union Twp.	76.9 950.9	1,027.8	
S-DFG-24.4	Lockwood Gorge	1957	Hunterdon	Lebanon Twp.	259.7	259.7	
S-DFG-24.5	Pequest	1956	Warren Warren	White Twp. Mansfield Twp. Liberty Twp.	185.0 2.7 73.1	260.8	
S-DFG-25.1	Berkshire Valley	1941	Morris Morris Morris	Roxbury Twp. Jefferson Twp. Mt. Arlington Boro	1,090.5 153.6 5.7	1,249.8	

STATE OWNED REAL PROPERTY IN NEW JERSEY

PLANNING DIVISION CODE NO	NAME OF FACILITY	YEAR ESTAB	LOCATION		ACREAGE		REMARKS
			COUNTY	MUNICIPALITY	SUB-TOTAL	TOTAL	
S-EPFG-25.2	Black River	1964	Morris Morris	Chester Twp. Randolph Twp.	2,658.9 5.0	2,663.9	
S-EPFG-27.1	Amwell Lake (Linvale)	1961	Hunterdon	East Amwell Twp.	21.6	21.6	
S-EPFG-27.2	Baldwin Lake	1961	Mercer	Hopewell Twp.	36.9	36.9	
S-EPFG-28.1	Vannest Refuge	1925	Mercer	Hamilton Twp.	98.0	98.0	
S-EPFG-28.2	Collier's Mills	1941	Ocean Ocean	Jackson Twp. Plumstead Twp.	11,770.4 192.0	11,962.4	
S-EPFG-28.3	Imlaystown Lake	1965	Monmouth	Upper Freehold Twp.	30.0	30.0	
S-EPFG-28.4	Assunpink	1965	Monmouth Monmouth Monmouth Mercer	Millstone Twp. Upper Freehold Twp. Roosevelt Boro Washington Twp.	730.4 1,848.2 78.8 104.3	2,761.7	
S-EPFG-28.5	Prospertown Lake	1967	Ocean Monmouth	Jackson Twp. Upper Freehold Twp.	119.4 5.6	125.0	
S-EPFG-29.1	State Quail Farm	1934	Ocean	Jackson Twp.	288.8	288.8	
S-EPFG-29.2	Turkey Swamp	1942	Monmouth	Freehold Twp.	1,855.9	1,855.9	
S-EPFG-29.3	Butterfly Pond	1958	Ocean	Jackson Twp.	103.1	103.1	
S-EPFG-30.1	Logan Pond	1960	Gloucester Gloucester	Logan Twp. Greenwich Twp.	10.2 1.7	11.9	
S-EPFG-30.2	Harrisonville Lake	1964	Gloucester	South Harrison Twp.	37.0	37.0	
S-EPFG-31.1	Glassboro	1935	Gloucester Gloucester	Glassboro Boro Clayton Boro	1,057.1 1,280.0	2,337.1	
S-EPFG-31.2	Medford	1936	Burlington Burlington	Lumberton Twp. Medford Twp.	7.1 206.9	214.0	

STATE OWNED REAL PROPERTY IN NEW JERSEY

ANNING DIVISION CODE NO	NAME OF FACILITY	YEAR ESTAB	LOCATION		ACREAGE		REMARKS
			COUNTY	MUNICIPALITY	SUB-TOTAL	TOTAL	
-EPFG-31.3	Rowands Pond	1942	Camden	Clementon Boro	13.0	13.0	
-EPFG-31.4	Winslow	1947	Camden	Winslow Twp.	1,715.8	1,715.8	
-EPFG-31.5	Greenwood Pond	1962	Salem	Pittsgrove Twp.	57.0	57.0	
-EPFG-32.1	Port Republic	1940	Atlantic	Port Republic City	755.0	755.0	
-EPFG-32.2	Greenwood Tract	1948	Ocean Ocean	Lacey Twp. Union Twp.	6,933.7 2,025.2	8,958.9	
-EPFG-32.3	Whiting	1952	Ocean	Manchester Twp.	1,190.8	1,190.8	
-EPFG-32.4	Pasadena	1954	Ocean	Manchester Twp.	3,119.9	3,119.9	
-EPFG-32.5	Manchester	1954	Ocean	Manchester Twp.	2,376.6	2,376.6	
-EPFG-32.6	Swan Bay	1968	Burlington	Washington Twp.	818.2	818.2	
-EPFG-33.1	Forked River Farm	1912	Ocean	Lacey Twp.	537.6	537.6	
-EPFG-33.2	Manahawkin	1933	Ocean	Stafford Twp.	964.9	964.9	
-EPFG-33.3	Stafford Forge	1965	Ocean Ocean	Eagleswood Twp. Little Egg Harbor Twp.	936.8 1,852.0	2,788.8	
-EPFG-34.1	Mad Horse Creek	1957	Salem	Lower Alloways Creek Twp.	5,555.2	5,555.2	
-EPFG-34.2	Maskeels Mill Pond	1958	Salem	Lower Alloways Creek Twp.	56.9	56.9	
-EPFG-34.3	Osborne Tract	1960	Cumberland	Stow Creek Twp.	182.6	182.6	
-EPFG-34.4	Clarks Pond	1962	Cumberland	Fairfield Twp.	163.9	163.9	
-EPFG-34.5	Dix Tract	1962	Cumberland	Fairfield Twp.	2,290.2	2,290.2	
-EPFG-34.6	Manumuskin Tract	1963	Cumberland	Lawrence Twp.	916.4	916.4	
-EPFG-35.1	Millville	1932	Cumberland Cumberland Cumberland Cumberland	Commercial Twp. Lawrence Twp. Downe Twp. Millville City	3,617.6 2,531.1 5,289.9 597.3	12,035.9	

STATE OWNED REAL PROPERTY IN NEW JERSEY

PLANNING DIVISION CODE NO	NAME OF FACILITY	YEAR ESTAB	LOCATION		ACREAGE		REMARKS
			COUNTY	MUNICIPALITY	SUB-TOTAL	TOTAL	
S-EPFG-35.2	Egg Island	1947	Cumberland	Downe Twp.	4,390.4	4,390.4	
S-EPFG-35.3	Heislerville	1956	Cumberland	Maurice River Twp.	2,812.5	2,812.5	
S-EPFG-35.4	Peaslee Tract	1956	Cumberland	Maurice River Twp.	11,199.0		
			Atlantic	Estell Manor City	1,440.0		
			Cape May	Upper Twp.	1,376.0		
			Cape May	Dennis Twp.	10.5	14,025.5	
S-EPFG-35.5	Dennis Creek	1957	Cape May	Dennis Twp.	2,044.8		
			Cape May	Middle Twp.	2,982.4	5,027.2	
S-EPFG-35.6	Turkey Point (Berry Town)	1958	Cumberland	Commercial Twp.	1,610.6	1,610.6	
S-EPFG-35.7	Menantico Pond	1961	Cumberland	Millville City	295.9	295.9	
S-EPFG-35.8	Corson Tract	1964	Cumberland	Maurice River Twp.	446.0	446.0	
S-EPFG-35.9	Fortescue	1966	Cumberland	Downe Twp.	894.1	894.1	
S-EPFG-35.10	Cedarville Ponds	1968	Cumberland	Lawrence Twp.	42.2	42.2	
S-EPFG-36.1	Tuckahoe	1933	Cape May	Upper Twp.	3,157.8		
			Atlantic	Estell Manor City	5,928.4		
			Atlantic	Corbin City	3,351.5	12,437.7	
S-EPFG-36.2	Cape May Wetlands	1956	Cape May	Upper Twp.	2,669.6		
			Cape May	Dennis Twp.	671.2		
			Cape May	Lower Twp.	839.0	4,179.8	
S-EPFG-36.3	Absecon Wetlands	1966	Atlantic	Galloway Twp.	57.4		
			Atlantic	Atlantic City	223.5		
			Atlantic	Brigatine City	242.6		
			Atlantic	Absecon City	114.9	638.4	
S-EPFG-37.1	Beaver Swamp	1964	Cape May	Dennis Twp.	1,123.5		
			Cape May	Middle Twp.	1,551.5	2,675.0	

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PLANNING DIVISION CODE NO	NAME OF FACILITY	YEAR ESTAB	LOCATION		ACREAGE		REMARKS
			COUNTY	MUNICIPALITY	SUB-TOTAL	TOTAL	
Natural Areas						4,065.1	
S-EPNA-21.1	Whittingham	1966	Sussex	Fredon Twp.	400.0	400.0	
S-EPNA-21.2	Johnsonburg	1967	Warren	Frelinghuysen Twp.	10.8	10.8	
S-EPNA-24.1	Bursch Sugar Maple	1967	Warren Warren	Hope Twp. Knowlton Twp.	18.3 6.4	24.7	
S-EPNA-24.2	Osmun Forest	1967	Warren	Knowlton Twp.	9.9	9.9	
S-EPNA-25.1	Troy Meadows	1966	Morris Morris	East Hanover Twp. Parsippany-Troy Hills Twp.	25.3 268.8	294.1	
S-EPNA-28.1	Cook	1970	Middlesex	South Brunswick Twp	52.1	52.1	
S-EPNA-29.1	Swan Point	1967	Ocean	Brick Twp.	147.5	147.5	
S-EPNA-29.2	Swimming River	1967	Monmouth	New Shrewsbury Boro	107.7	107.7	
S-EPNA-31.1	Hammonton Lake	1965	Atlantic	Hammonton Town	97.7	97.7	
S-EPNA-33.1	Great Bay	1967	Ocean	Little Egg Harbor Twp.	395.5	395.5	
S-EPNA-34.1	Cohansey	1965	Cumberland Cumberland	Fairfield Twp. Lawrence Twp.	84.3 15.2	99.5	
S-EPNA-36.1	North Brigantine	1967	Atlantic	Brigantine City	678.8	678.8	
S-EPNA-37.1	Cape May Wetlands	1965	Cape May Cape May Cape May	Avalon Boro Dennis Twp. Middle Twp.	220.0 656.3 870.5	1,746.8	

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PLANNING DIVISION CODE NO	NAME OF FACILITY	YEAR ESTAB	LOCATION		ACREAGE		REMARKS
			COUNTY	MUNICIPALITY	SUB-TOTAL	TOTAL	
Division of Marine Services						71.2 67.7	
Bureau of Navigation							
S-EPN-29.1	Point Pleasant	1944	Ocean	Point Pleasant Boro	1.1	1.1	Marine Police Sub-Station
S-EPN-29.2	Leonardo	1944	Monmouth	Middletown Twp.	10.1	10.1	Present capacity - 182 Boats
S-EPN-33.1	Forked River	1933	Ocean	Lacey Twp.	12.9	12.9	Present capacity - 105 Boats
S-EPN-35.1	Fortescue	1940	Cumberland	Downe Twp.	15.0	15.0	Present capacity - 112 Boats
S-EPN-36.1	Atlantic City	1943	Atlantic	Atlantic City	28.6	28.6	9 fixed piers. 3 fixed extensions total capacity - 384 berths. 30 to 65 ft. boats
Bureau of Marine Enforcement						3.5	
S-EPME-22.1	Great Cove - Lake Hopatcong	1971	Morris	Jefferson Twp.	1.0	1.0	
S-EPME-29.1	Monmouth Beach Coast Guard Station	1968	Monmouth	Monmouth Beach Boro	1.2	1.2	
S-EPME-37.1	Hereford Inlet Coast Guard Station	1972	Cape May	North Wildwood City	1.3	1.3	

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PLANNING DIVISION CODE NO	NAME OF FACILITY	YEAR ESTAB	LOCATION		ACREAGE		REMARKS
			COUNTY	MUNICIPALITY	SUB-TOTAL	TOTAL	
Historic Sites						47.0	
S-EPH-23.1	Hermitage House	1970	Bergen	Hohokus Boro	4.9	4.9	
S-EPH-24.1	Oxford Furnace	1941	Warren	Oxford Twp.	0.6	0.6	
S-EPH-25.1	Wallace House	1947	Somerset	Somerville Boro	1.5	1.5	
S-EPH-25.2	Old Dutch Parsonage	1947	Somerset	Somerville Boro	0.6	0.6	
S-EPH-25.3	Joyce Kilmer House	1969	Middlesex	New Brunswick City	0.2	0.2	
S-EPH-26.1	Von Steuben House	1926	Bergen	River Edge Boro	1.1	1.1	
S-EPH-26.2	Grover Cleveland Birth-place	1933	Essex	Caldwell Boro	2.1	2.1	
S-EPH-26.3	Boxwood Hall	1941	Union	Elizabeth City	0.4	0.4	
S-EPH-26.4	Westminister House	1967	Middlesex	Perth Amboy City	0.6	0.6	
S-EPH-27.1	Lawrence House	1941	Burlington	Burlington City	0.2	0.2	
S-EPH-27.2	Marshall House	1968	Hunterdon	Lambertville City	0.5	0.5	
S-EPH-28.1	Trenton Battle Monument	1887	Mercer	Trenton City	0.1	0.1	
S-EPH-28.2	Princeton Battle Monument	1923	Mercer	Princeton Boro	1.7	1.7	
S-EPH-28.3	Rockingham	1936	Somerset	Franklin Twp.	5.3	5.3	
S-EPH-28.4	Morven	1954	Mercer	Princeton Boro	4.6	4.6	
S-EPH-29.1	Monmouth Battle Monument	1886	Monmouth	Freehold Boro	3.2	3.2	
S-EPH-29.2	Veterans of all Wars Memorial	1934	Ocean	Manchester Twp.	0.2	0.2	

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PLANNING DIVISION CODE NO.	NAME OF FACILITY	YEAR ESTAB	LOCATION		ACREAGE		REMARKS
			COUNTY	MUNICIPALITY	SUB-TOTAL	TOTAL	
S-EPH-29.3	Twin Lights	1962	Monmouth	Highlands Boro	3.9	3.9	
S-EPH-31.1	Indian King Tavern	1902	Camden	Haddonfield Boro	0.2	0.2	
S-EPH-31.2	Walt Whitman House	1946	Camden	Camden City	0.1	0.1	
S-EPH-31.3	Whitman-Stafford House	1965	Camden	Laurel Springs Boro	0.4	0.4	
S-EPH-32.1	Carranza Memorial	1935	Burlington	Tabernacle Twp.	9.5	9.5	
S-EPH-34.1	Hancock House	1931	Salem	Lower Alloways Creek Twp	1.3	1.3	
S-EPH-36.1	Somers Mansion	1943	Atlantic	Somers Point City	1.8	1.8	
S-EPH-36.2	Absecon Lighthouse	1966	Atlantic	Atlantic City	2.0	2.0	
--	Monacacy Battle Monument	1906	--	State of Maryland	(0.5)	(0.5)	See Note Page ii

STATE OWNED REAL PROPERTY IN NEW JERSEY

PLANNING DIVISION CODE NO	NAME OF FACILITY	YEAR ESTAB	LOCATION		ACREAGE		REMARKS
			COUNTY	MUNICIPALITY	SUB-TOTAL	TOTAL	
Bureau of Recreation						624.2	
S-EPR-28.1	Delaware & Raritan Canal	1970	Somerset	Franklin Twp.	1.7	1.7	
S-EPR-29.1	Manasquan Canal	1966	Ocean	Point Pleasant Boro	5.2	5.2	
S-EPR-32.1	Warren Grove	1972	Burlington Ocean	Bass River Twp. Stafford Twp. Little Egg Harbor Twp.	191.6 185.4 240.3	617.3	
Miscellaneous Area						475.2	
S-EPM-25.1	Natural Lands Trust North Jersey Conservation Foundation	1969	Hunterdon	Readington Twp.	36.2	36.2	
S-EPM-25.2	Mc Evoy	1971	Morris	Passaic Twp.	95.0	95.0	
S-EPM-26.1	Little Basin	1925	Hudson	Jersey City	13.6	13.6	Morris Canal & Banking Land
S-EPM-28.1	Old Airport Property	1942	Mercer	Lawrence Twp.	120.5	120.5	
S-EPM-28.2	Colliers Mill Tract	1968	Ocean	Jackson Twp.	114.9	114.9	Lands obtained by alienation from Jackson Twp. for Jackson State Forest
S-EPM-37.1	Natural Lands Trust, Inc.	1969	Cape May	Upper Twp.	95.0	95.0	
Burial Grounds						0.4	
S-EPB-29.1	Whitelawn Cemetery	1904	Ocean	Point Pleasant Boro	0.1	0.1	
S-EPB-33.1	Baptist Cemetery	1904	Ocean	Stafford Twp.	0.1	0.1	
S-EPB-33.2	Riverside Cemetery	1904	Ocean	Dover Twp.	0.2	0.2	

STATE OWNED REAL PROPERTY IN NEW JERSEY

PLANNING DIVISION CODE NO.	NAME OF FACILITY	YEAR ESTAB	LOCATION		ACREAGE		REMARKS
			COUNTY	MUNICIPALITY	SUB-TOTAL	TOTAL	
DEPARTMENT OF INSTITUTIONS AND AGENCIES						13245.9	
Division of Mental Health & Hospitals						4886.3	
S-IH-25.1	Greystone Park Psychiatric Hospital	1876	Morris	Par-sip-Troy-Hills Twp.	857.4		State Psychiatric Hospital patients of any age from Northern New Jersey Counties. (17.2 acres occupied by Div. of Retardation 6-70)
			Morris	Morris Plains Boro	35.8		
			Morris	Denville Twp.	107.4		
			Morris	Morris Twp.	200.4	1201.0	
S-IH-25.2	New Jersey Diagnostic Center, Menlo Park	1946	Middlesex	Edison Twp.	17.8	17.8	Provides intensive psychiatric studies and treatment of individuals referred by courts or other public agencies
S-IH-27.1	Trenton Psychiatric Hospital	1848	Mercer	Trenton City	142.3		Voluntary and legally committed mentally-ill persons from Hudson, Mercer, Hunterdon, Warren and the Western portion of Essex Counties. Forensic psychiatric section serves the entire State
			Mercer	Ewing Twp.	769.2	911.5	
*S-IH-28.1	New Jersey Neuro-psychiatric Institute	1898	Somerset	Montgomery Twp.	932.0	932.0	Treatment of specific groups children up to 12 years of age suffering mental illness, male alcoholics, diagnosis of neurological diseases, treatment & care of patients with brain damage, psychoses, epilepsy and mental deficiencies. Training School for Boys, Skillman
S-IH-29.1	Marlboro State Hospital	1931	Monmouth	Colts Neck Twp.	2.0		For psychiatric patients any age from Monmouth, Middlesex, Ocean, and Union Counties
			Monmouth	Marlboro Twp.	980.0	982.0	

*Also serves as Somerset County Regional Mental Health Center

STATE OWNED REAL PROPERTY IN NEW JERSEY

PLANNING DIVISION CODE NO	NAME OF FACILITY	YEAR ESTAB	LOCATION		ACREAGE		REMARKS
			COUNTY	MUNICIPALITY	SUB-TOTAL	TOTAL	
S-IH-29.2	Arthur Brisbane Child Treatment Center	1946	Monmouth	Wall Twp.	57.0	57.0	Treatment Center, admission of children who are seriously mal-adjusted or mental disorders requiring observation, care and treatment
S-IH-31.1	Ancora Psychiatric Hospital	1955	Camden	Winslow Twp.	785.0	785.0	Psychiatric patients any age from Southern New Jersey Counties
Division of Mental Retardation						3224.5	
S-IR-24.1	Hunterdon State School	1967	Hunterdon	Union Twp.	108.7	108.7	Retarded males and females age 5 years and over
S-IR-24.2	Warren County Day Care Center	1967	Warren	Mansfield Twp.	5.0	5.0	Day School for Mentally Retarded Children
S-IR-25.1	Somerset County Day Care Center	1967	Somerset	Hillsborough Twp.	4.3	4.3	Day School for Mentally Retarded Children
S-IR-25.2	Morris County Day Care Center	1970	Morris	Morris Twp.	17.2	17.2	Day School for Mentally Retarded Children (located on Greystone Grounds)
S-IR-25.3	Union County Day Care Center	1972	Union	Scotch Plains Twp.	2.7	2.7	1530 Terrell Road
S-IR-26.1	North Jersey Training School, Totowa	1928	Passaic	Totowa Boro	180.8	180.8	Retarded males and females age 5 and over, (24.9 ac. to DOT)
S-IR-26.2	Woodbridge State School	1965	Middlesex	Woodbridge Twp.	64.9	64.9	Mentally retarded males & females 5 years and over
S-IR-26.3	Passaic County Day Care Center	1967	Passaic	Totowa Boro	9.6	9.6	Day School for Retarded Children (located on Totowa Training School Grounds)
S-IR-26.4	Middlesex County Day Care Center	1968	Middlesex	Woodbridge Twp.	5.0	5.0	Day School for Mentally Retarded Children, located on State Prison Grounds

STATE OWNED REAL PROPERTY IN NEW JERSEY

PLANNING DIVISION CODE NO	NAME OF FACILITY	YEAR ESTAB	LOCATION		ACREAGE		REMARKS
			COUNTY	MUNICIPALITY	SUB-TOTAL	TOTAL	
S-IR-27.1	Mercer County Day Care Center	1967	Mercer Mercer	Trenton City Ewing Twp.	0.3 9.9	10.2	Day School for Mentally Retarded Children
S-IR-27.2	Burlington County Day Care Center	1968	Burlington	Westampton Twp.	6.0	6.0	Day School for Mentally Retarded Children
S-IR-28.1	E.R. Johnstone Training and Research Center	1955	Burlington	Bordentown Twp.	248.3	248.3	Wide range of mild & moderately retarded males and females
S-IR-29.1	Monmouth County Day Care Center	1970	Monmouth	New Shrewsbury Boro	9.1	9.1	Day School for Mentally Retarded Children (to open FY-1973)
S-IR-31.1	Camden County Day Care Center	1967	Camden	Cherry Hill Twp.	9.9	9.9	Day School for Mentally Retarded Children
S-IR-31.2	Gloucester County Day Care Center	1969	Gloucester	Monroe Twp.	25.2	25.2	Day School for Mentally Retarded Children (to open FY-1973)
S-IR-32.1	New Lisbon State School	1916	Burlington	Woodland Twp.	1,854.0	1,854.0	School for Retarded males age 5 years and over
S-IR-33.1	Ocean County Day Care Center	1970	Ocean	Dover Twp. (Toms River)	6.0	6.0	Day School for Mentally Retarded Children (to open FY-1973)
S-IR-35.1	Vineland State School Main Institution	1888	Cumberland	Vineland City	208.1	208.1	Mentally retarded females age 5 years and over
S-IR-35.2	Woodbine State School	1921	Cape May	Woodbine Boro	206.0	206.0	Mentally retarded males age 5 years and over
S-IR-35.3	Vineland State School Almond Road	1925	Cumberland	Vineland City	77.5	77.5	Mentally retarded females age 5 years and over
S-IR-35.4	Vineland State School Brewster Road Farm	1953	Atlantic Gloucester	Buena Boro Franklin Twp.	135.0 20.0	155.0	Farm land, no buildings
S-IR-35.5	Cumberland County Day Care Center	1967	Cumberland	Vineland City	3.5	3.5	Day School for Mentally Retarded Children
S-IR-35.6	Cape May County Day Care Center	1969	Cape May	Middle Twp. (Crest Haven)	4.1	4.1	Day School for Mentally Retarded Children

STATE OWNED REAL PROPERTY IN NEW JERSEY

PLANNING DIVISION CODE NO	NAME OF FACILITY	YEAR ESTAB	LOCATION		ACREAGE		REMARKS
			COUNTY	MUNICIPALITY	SUB-TOTAL	TOTAL	
S-1R-36.1	Atlantic County Day Care Center	1972	Atlantic	Egg Harbor Twp.	3.4	3.4	Day School for Retarded Children (to open FY-1973)
Division of Correction & Parole						4,417.9	
S-1C-24.1	Correctional Institution For Women, Clinton	1913	Hunterdon	Union Twp.	226.3	226.3	For women over 16 years of age minimum security institution (15 ac. Transferred to DOT Nov. 1971)
S-1C-24.2	Youth Correctional Institution, Annandale	1913	Hunterdon	Clinton Twp.	721.0	721.0	Minimum security institution for males age 15 to 23 committed for indeterminate sentences
S-1C-24.3	Residential Group Center, Warren	1960	Warren	White Twp.	74.5	74.5	Residential facility for youthful offenders
S-1C-26.1	State Prison Rahway	1901	Middlesex	Woodbridge Twp.	169.7	169.7	Serious offenders serving minimum-maximum sentences, medium security 5.32 ac. transferred to Div. of Youth & Family Services, Aug. 1970
S-1C-27.1	Training School for Girls, Trenton	1871	Mercer	Trenton City Ewing Twp.	48.5 74.9	123.4	Training School for Delinquent Girls age 8 to 17 years
S-1C-27.2	Residential Group Center Highfields	1950	Hunterdon Mercer	East Amwell Twp. Hopewell Twp.	221.9 168.1	390.0	Residential facility for youthful offenders
S-1C-28.1	State Prison, Trenton	1798	Mercer	Trenton City	12.0	12.0	Reception and Classification Center retaining the older and more serious offenders requiring maximum security
S-1C-28.2	Training School for Boys, Jamesburg	1867	Middlesex	Monroe Twp.	662.0	662.0	Delinquent boys between ages 13 to 16 years, for indeterminate sentences

STATE OWNED REAL PROPERTY IN NEW JERSEY

PLANNING DIVISION CODE NO	NAME OF FACILITY	YEAR ESTAB.	LOCATION		ACREAGE		REMARKS
			COUNTY	MUNICIPALITY	SUB-TOTAL	TOTAL	
S-IC-28.3	Youth Correctional Institutional, Bordentown	1937	Burlington	Chesterfield Twp.	530.0	530.0	Medium security youth correctional center
S-IC-28.4	Arneytown	1953	Burlington	North Hanover Twp.	225.0	225.0	Farm land used by the Bordentown Institution
S-IC-28.5	Youth Reception and Correctional Center, Yardville	1968	Burlington	Chesterfield Twp.	50.0	50.0	Medium security, located on Bordentown Institution Grounds (S-IC-28.3)
S-IC-28.6	Training School for Boys, Skillman	1969	Somerset	Montgomery Twp.	140.0	140.0	Located on NPI Grounds (S-IH-28.1)
S-IC-29.1	Residential Group Center, Turrell	1961	Monmouth	Wall Twp.	N.A.		Residential facility for youthful female offenders, acreage shared with Arthur Brisbane Child Treatment Center
S-IC-33.1	Residential Group Center, Ocean	1964	Ocean	Lacey Twp.	N.A.		Residential facility for yruthful offenders, located on Fish & Game State property
S-IC-35.1	State Prison, Leesburg	1913	Cumberland	Maurice River Twp.	1,094.0	1,094.0	Combined minimum-medium security prison for male adult offenders
Division of Community & Professional Services						670.4	
S-ICPS-24.1	N.J. Hospital for Chest Diseases, Glen Gardner	1907	Hunterdon	Glen Gardner Boro Lebanon Twp.	15.0 535.0	550.0	Care and treatment of N.J. patients afflicted with pulmonary diseases ages 5 to 55 that are curable
S-ICPS-25.1	N.J. Home for Disabled Soldiers, Menlo Park	1932	Middlesex	Edison Twp. Woodbridge Twp.	70.4 20.0	90.4	Nursing and domiciliary care for New Jersey Veterans
S-ICPS-35.1	N.J. Home for Disabled Soldiers, Vineland	1898	Cumberland	Vineland City	30.0	30.0	Nursing and domiciliary care for New Jersey Veterans

STATE OWNED REAL PROPERTY IN NEW JERSEY

PLANNING DIVISION CODE NO	NAME OF FACILITY	YEAR ESTAB	LOCATION		ACREAGE		REMARKS
			COUNTY	MUNICIPALITY	SUB-TOTAL	TOTAL	
Division of Youth & Family Services						46.8	
S-IYFS-25.1	Morristown Group Care Home	1965	Morris	Morristown Town	1.2	1.2	Located 9 Cutler Street
S-IYFS-25.2	Plainfield Group Care Home	1969	Union	Plainfield City	1.0	1.0	Located 519 W. 8th Street
S-IYFS-25.3	Unit for Hard-to-Place Children, Denville	1971	Morris	Denville Twp.	17.3	17.3	Located on Morris Avenue-Children in need of residential care
S-IYFS-26.1	Emergency Child Reception Center, Woodbridge	1970	Middlesex	Woodbridge Twp.	5.3	5.3	Located on Rahway Prison Grounds (under Construction July 1973)
S-IYFS-26.2	Unit for Hard-to-Place Children, Cedar Grove	1972	Essex	Cedar Grove Twp.	5.0	5.0	Children in need of Residential Care (under Construction Jan. 1973)
S-IYFS-27.1	Unit for Hard-to-Place Children, Ewing	1972	Mercer	Ewing Twp.	6.0	6.0	Children in need of residential care located on grounds of Trenton Training School for Girls
S-IYFS-29.1	Group Care Home, Red Bank	1960	Monmouth	Red Bank Boro	1.2	1.2	Located 41 Rector Place
S-IYFS-35.1	Unit for Hard-to-Place Children, Vineland	1972	Cumberland	Vineland City	9.8	9.8	Children in need of residential care located on Vineland State School Grounds, Maple Avenue

STATE OWNED REAL PROPERTY IN NEW JERSEY

PLANNING DIVISION CODE NO	NAME OF FACILITY	YEAR ESTAB	LOCATION		ACREAGE		REMARKS
			COUNTY	MUNICIPALITY	SUB-TOTAL	TOTAL	
DEPARTMENT OF HIGHER EDUCATION						3688.7	
S-HE-22.1	Rutgers, the State University	1766	Sussex Sussex	Montague Twp. Wantage Twp.	76.5 565.9	642.4	Operated by the College of Agriculture & Environmental Science
S-HE-23.1	Wm. Paterson State College	1855	Passaic Passaic Passaic	Haledon Boro North Haledon Boro Wayne Twp.	45.3 105.7 76.9	227.9	A Multi-Purpose Liberal Arts and Science Institution, offering B.A., B.S. and Masters Degrees
S-HE-23.2	Ramapo State College	1968	Bergen	Mahwah Twp.	355.0	355.0	A Multi-Purpose Liberal Arts and Science Institution offering B.A. and B.S. Degrees
S-HE-26.1	Newark College of Engineering	1881	Essex	Newark City	16.7	16.7	Offers Under-Graduate & Graduate Degrees in Engineering & Related Fields
S-HE-26.2	Montclair State College	1908	Essex Passaic Passaic Morris	Montclair Town Little Falls Twp. Clifton City Montville Twp.	32.0 59.0 39.7 30.3	161.0	A Multi-Purpose Liberal Arts Institution offering B.A. & M.A. Degrees
S-HE-26.3	Newark State College	1913	Union	Union Twp.	122.0	122.0	A Multi-Purpose Liberal Arts Institution offering B.A. & M.A. Degrees
S-HE-26.4	Jersey City State College	1929	Hudson	Jersey City	14.3	14.3	Multi-Purpose Liberal Arts Institution offering B.A. & M.A. Degrees
S-HE-26.5	College of Medicine and Dentistry of N.J.	1965	Essex	Newark City	63.9	63.9	Provides Instructional Programs for Professional Education of Physicians and dentists and for Allied Health Professions
S-HE-27.1	Trenton State College	1855	Mercer	Ewing Twp. Hopewell Twp.	208.2 0.4	208.6	Multi-Purpose Liberal Arts and Science Institution offering B.A., B.S., & M.A. Degrees

STATE OWNED REAL PROPERTY IN NEW JERSEY

PLANNING DIVISION CODE NO.	NAME OF FACILITY	YEAR ESTAB	LOCATION		ACREAGE		REMARKS
			COUNTY	MUNICIPALITY	SUB-TOTAL	TOTAL	
S-HE-28.1	*Rutgers, the State University	1766	Middlesex Middlesex Middlesex	East Brunswick Twp. New Brunswick City North Brunswick Twp.	80.0 3.3 141.6	224.9	Operated by the College of Agriculture & Environmental Science
S-HE-31.1	Glassboro State College	1923	Gloucester	Gloucester Boro	178.0	178.0	A Multi-Purpose Liberal Arts and Science Institutions offering the B.A. and M.A. Degrees
S-HE-35.1	Rutgers, the State University	1766	Cumberland	Vineland City	0.5	0.5	Poultry Diagnostic Laboratory of the College of Agriculture
S-HE-36.1	Stockton State College	1968	Atlantic	Galloway Twp.	1473.5	1473.5	A Multi-Purpose Liberal Arts and Science Institution offering B.A. and B.S. Degrees
DEPARTMENT OF EDUCATION						116.7	
S-E-26.1	Land For Future Use	1969	Essex	Newark City	0.7	0.7	Land Acquired for future new construction
S-E-27.1	N.J. School for Deaf	1883	Mercer	Ewing Twp.	116.0	116.0	Offers instruction for the deaf from age 5-21 years, has primary, general elementary, and vocational departments
	*4000+ acres of land owned by Rutgers Board of Trustees not listed, also not shown on map.						

STATE OWNED REAL PROPERTY IN NEW JERSEY

PLANNING DIVISION CODE NO	NAME OF FACILITY	YEAR ESTAB	LOCATION		ACREAGE		REMARKS
			COUNTY	MUNICIPALITY	SUB-TOTAL	TOTAL	
DEPARTMENT OF DEFENSE						797.3	
S-D-22.1	Franklin Armory	1948	Sussex	Franklin Boro	10.2	10.2	
S-D-22.2	Newton Armory	1956	Sussex	Newton Town	6.0	6.0	Reverts to Town of Newton
S-D-23.1	Dumont Armory	1926	Bergen	Dumont Boro	0.3	0.3	
S-D-23.2	Riverdale Armory	1949	Morris	Riverdale Boro	8.5	8.5	
S-D-24.1	Phillipsburg Armory	1949	Warren	Phillipsburg Town	6.8	6.8	Reverts to Town of Phillipsburg
S-D-24.2	Hackettstown Armory	1950	Warren	Hackettstown Town	15.0	15.0	Reverts to Dept of E.P. and American Legion
S-D-24.3	Flemington National Guard Training Center	1950	Hunterdon	Raritan Twp.	43.8	43.8	
S-D-24.4	Washington Armory	1955	Warren	Hansfield Twp.	17.0	17.0	Property of Dept of Law and Public Safety
S-D-25.1	Somerville Armory	1908	Somerset	Somerville Boro	0.8	0.8	
S-D-25.2	New Brunswick Armory	1913	Middlesex	New Brunswick City	0.4	0.4	
S-D-25.3	Westfield Armory	1922	Union	Westfield Town	12.6	12.6	
S-D-25.4	Plainfield Armory	1929	Union	Plainfield City	1.9	1.9	
S-D-25.5	Morristown Armory	1937	Morris	Morris Twp.	43.0	43.0	
S-D-25.6	Dover Armory	1948	Morris	Rockaway Twp.	16.1	16.1	Reverts to Town of Dover
S-D-25.7	Bound Brook Armory	1951	Somerset Somerset	Bound Brook Boro Bridge Water Twp.	4.6 8.0	12.6	Reverts to Boro of Bound Brook
S-D-25.8	Franklin Armory	1957	Somerset	Franklin Twp.	15.0	15.0	
S-D-26.1	Orange Armory	1887	Essex	Orange City	1.4	1.4	

STATE OWNED REAL PROPERTY IN NEW JERSEY

PLANNING DIVISION CODE NO	NAME OF FACILITY	YEAR ESTAB	LOCATION		ACREAGE		REMARKS
			COUNTY	MUNICIPALITY	SUB-TOTAL	TOTAL	
S-D-26.2	Paterson Armory	1889	Passaic	Paterson City	1.2	1.2	
S-D-26.3	Newark Cavalry Armory	1907	Essex	Newark City	1.8	1.8	
S-D-26.4	Elizabeth Armory	1910	Union	Elizabeth City	2.0	2.0	
S-D-26.5	East Orange Armory	1929	Essex	East Orange City	1.5	1.5	
S-D-26.6	Perth Amboy Naval Reserve Training Center	1929	Middlesex	Perth Amboy City	0.6	0.6	
S-D-26.7	Jersey City Armory	1935	Hudson	Jersey City	1.8	1.8	
S-D-26.8	West Orange Armory and Maintenance Shop	1936	Essex	West Orange Town	61.0	61.0	
S-D-26.9	Teaneck Armory	1939	Bergen	Teaneck Twp.	13.7	13.7	
S-D-26.10	Lodi Armory	1941	Bergen	Lodi Boro	4.5	4.5	
S-D-26.11	Woodbridge Maint. Shop	1951	Middlesex	Woodbridge Twp.	15.9	15.9	
S-D-26.12	Woodbridge Armory	1959	Middlesex	Woodbridge Twp.	4.3	4.3	
S-D-27.1	Burlington Armory	1926	Burlington	Burlington City	1.1	1.1	
S-D-28.1	Trenton Artillery Armory	1926	Mercer	Lawrence Twp.	75.1	75.1	
S-D-28.2	Bordentown Armory - Rt 206	1949	Burlington	Bordentown Twp.	4.7	4.7	Reverts to City of Bordentown
S-D-28.3	Princeton Armory	1949	Mercer	Princeton Twp.	8.1	8.1	Reverts to Boro of Princeton
S-D-28.4	Bordentown Ordnance Maintenance Shop - Rt 130	1957	Burlington	Bordentown Twp.	14.9	14.9	Reverts to Board of Education
S-D-28.5	Trenton Garage	1965	Mercer	Trenton City	0.2	0.2	
S-D-29.1	Sea Girt-State Arsenal and Camp Grounds	1885	Monmouth	Sea Girt Boro	165.0	165.0	

STATE OWNED REAL PROPERTY IN NEW JERSEY

PLANNING DIVISION CODE NO	NAME OF FACILITY	YEAR ESTAB	LOCATION		ACREAGE		REMARKS
			COUNTY	MUNICIPALITY	SUB-TOTAL	TOTAL	
S-D-29.2	Red Bank Armory	1914	Monmouth	Red Bank Boro	1.2	1.2	
S-D-29.3	Freehold Armory	1940	Monmouth	Freehold Boro	4.6	4.6	
S-D-29.4	Long Branch Armory	1952	Monmouth	Long Branch City	2.9	2.9	Reverts to City of Long Branch
S-D-30.1	Salem Armory	1922	Salem	Salem City	0.5	0.5	
S-D-30.2	Quinton Twp.	1957	Salem	Lower Alloways Creek Quinton Twp.	2.9 9.6	12.5	
S-D-31.1	Camden Armory	1911	Camden	Camden City	2.3	2.3	
S-D-31.2	Woodbury Armory	1929	Gloucester	Woodbury City	4.6	4.6	1 Parcel reverts to county of Gloucester
S-D-31.3	Hammonton Armory	1948	Atlantic	Hammonton Town	10.0	10.0	Reverts to Town of Hammonton
S-D-31.4	Pitman Armory	1949	Gloucester	Pitman Boro	8.0	8.0	Reverts to Boro of Pitman
S-D-31.5	Deptford Armory	1956	Gloucester	Deptford Twp.	10.0	10.0	Not mapped, survey not available
S-D-31.6	Cherry Hill Armory	1957	Camden	Cherry Hill Twp.	7.6	7.6	
S-D-31.7	Mount Holly Armory	1962	Burlington	Mount Holly Twp.	5.0	5.0	
S-D-33.1	Toms River Armory	1952	Ocean	Dover Twp.	30.1	30.1	Reverts to county of Ocean
S-D-33.2	Tuckerton Armory	1954	Ocean	Tuckerton Boro	15.6	15.6	
S-D-34.1	Bridgeton National Guard Training Center	1949	Cumberland	Upper Deerfield Twp.	20.8	20.8	
S-D-35.1	Vineland Armory	1937	Cumberland	Vineland City	44.6	44.6	
S-D-35.2	Cape May Court House	1959	Cape May	Middle Twp.	21.0	21.0	
S-D-36.1	Atlantic City Armory	1926	Atlantic	Atlantic City	4.5	4.5	Reverts to Atlantic City
S-D-36.2	Ocean City Armory	1941	Cape May	Ocean City	2.7	2.7	Reverts to Ocean City

STATE OWNED REAL PROPERTY IN NEW JERSEY

PLANNING DIVISION CODE NO	NAME OF FACILITY	YEAR ESTAB	LOCATION		ACREAGE		REMARKS
			COUNTY	MUNICIPALITY	SUB-TOTAL	TOTAL	
DEPARTMENT OF TRANSPORTATION						411.9	
S-DOT-21.1	Columbia Maint. Yard Rt 46	1953	Warren	Knowlton Twp.	2.0		R.O.W. Parcel
S-DOT-21.2	Yellow Frame Maint. Yard Rt 94	1966	Warren	Frelinghuysen Twp.	2.5		
S-DOT-22.1	Branchville Garage and Maint. Yard - Rt 206	1956	Sussex	Branchville Boro	3.1		
S-DOT-22.2	Lafayette Maint. Yard	1968	Sussex	Lafayette Twp.	3.1		
S-DOT-22.3	Sussex Maint. Yard - Rt 23	1969	Sussex	Wantage Twp.	8.9		
S-DOT-24.1	Clinton Point Maint. Yard	1954	Hunterdon	Clinton Twp.	3.5		
S-DOT-24.2	Washington Maint. Yard Rt 24	1958	Warren	Washington Twp.	2.8		
S-DOT-24.3	Flemington Maint. Yard	1958	Hunterdon	Raritan Twp.	4.4		
S-DOT-24.4	Bloomsbury Maint. Yard Rt 22	1958	Hunterdon	Bloomsbury Boro	1.7		
S-DOT-25.1	Dover Garage E. Blackwell St.	1945	Morris	Dover Town	0.3		R.O.W. Parcel
S-DOT-25.2	Netcong Garage & Maint. Yard - Rt 206	1953	Morris	Roxbury Twp.	5.5		
S-DOT-25.3	Somerville Maint. Yard Rts 22 & 202	1962	Somerset	Somerville Boro	3.5		
S-DOT-25.4	Rockaway Maint. Yard Rt 15	1965	Morris	Rockaway Twp.	3.4		

STATE OWNED REAL PROPERTY IN NEW JERSEY

PLANNING DIVISION CODE NO	NAME OF FACILITY	YEAR ESTAB	LOCATION		ACREAGE		REMARKS
			COUNTY	MUNICIPALITY	SUB-TOTAL	TOTAL	
S-DOT-25.5	Parisippany-Troy Hills Rts 46, 80, 280	1966	Morris	Parsippany-Troy Hills Twp.	3.0		
S-DOT-25.6	Chester Maint. Yard Rt 206	1967	Morris	Chester Boro	2.0		
S-DOT-25.7	Hanover Maint. Yard Rts 287 & 10	1969	Morris	Hanover Twp.	12.5		Rt 287 R.O.W. Parcel
S-DOT-25.8	Bedminister Maint. Yard Rts 202 & 206	1970	Somerset	Bedminister Twp.	12.2		
S-DOT-25.9	Hanover Twp. Maint. Yard Rt 10 - Jefferson Road	1970	Morris	Hanover Twp.	2.8		
S-DOT-26.1	Woodbridge Maint. Yard Rt 1	1930	Middlesex	Woodbridge Twp.	0.5		Will be lost to Road Construction R.O.W. Parcel
S-DOT-26.2	Jersey City Maint. Yard Seamon & St. Paul Aves.	1945	Hudson	Jersey City	0.5		R.O.W. Parcel
S-DOT-26.3	Clifton Maint. Yard Rt 3	1949	Passaic	Clifton City	1.9		R.O.W. Parcel
S-DOT-26.4	Sayreville Maint. Yard Rts 9 & 35	1955	Middlesex	Sayreville Boro	4.7		
S-DOT-26.5	Avenel Garage Rts 1 & 35	1955	Middlesex	Woodbridge Twp.	0.4		
S-DOT-26.6	Lodi Garage & Maint. Yard Rt 130	1958	Bergen	Lodi Boro	4.4		
S-DOT-26.7	Elizabeth Maint. Yard Rts 1 & 9	1960	Union	Elizabeth City	0.3		
S-DOT-26.8	Newark Maint. Yard Garage & Office - Rts 1, 21, & 22	1961	Essex	Newark City	6.5		

STATE OWNED REAL PROPERTY IN NEW JERSEY

PLANNING DIVISION CODE NO	NAME OF FACILITY	YEAR ESTAB	LOCATION		ACREAGE		REMARKS
			COUNTY	MUNICIPALITY	SUB-TOTAL	TOTAL	
S-DOT-26.9	Clark (Parkway) Garden State Parkway So. Bound	1964	Union	Clark Twp.	3.5		R.O.W. Parcel
S-DOT-26.10	Secaucus Maint. Yard Rt 3 - Under Hackensack River Bridge at Grace St.	1968	Hudson	Secaucus Twp.	1.0		R.O.W. Parcel & Exchange of land with adjacent property owner
S-DOT-26.11	Totawa Maint. Yard Wilson Ave.	1969	Passaic	Paterson City	1.6		
S-DOT-26.12	Springfield Maint. Yard	1970	Union	Summit Twp.	6.6		
S-DOT-26.13	Rt 80 R.O.W.	1971	Passaic	Totawa Boro	24.9		R.O.W. from Totawa Training School
S-DOT-27.1	Edgewater Park Maint. Yard Rt 130	1958	Burlington	Edgewater Park Twp.	2.5		
S-DOT-27.2	Fernwood Garage & Main Offices	1941 1942	Mercer	Ewing Twp.	39.1		
S-DOT-27.3	W. Trenton Maint. Yard Bear Tavern Road	1965	Mercer	Ewing Twp.	3.1		Acquired by transfer from I & A to DOT
S-DOT-27.4	W. Amwell (Lambertville) Maint. Yard - Rt 202	1966	Hunterdon	West Amwell Twp.	11.0		
S-DOT-28.1	Hightstown Maint. Yard Maxwell Ave.	1939	Mercer	Highstown Boro	0.6		
S-DOT-28.2	Sand Hill Maint. Yard Rt 1	1958	Middlesex	South Brunswick Twp.	2.6		
S-DOT-28.3	N. Brunswick Maint. Yard College Farm Road & Rt 1	1967	Middlesex	North Brunswick Twp.	2.1		On Rutgers University Property (by agreement)
S-DOT-28.4	Bordentown Maint. Yard Rt 130	1968	Burlington	Bordentown Twp.	3.3		

STATE OWNED REAL PROPERTY IN NEW JERSEY

PLANNING DIVISION CODE NO	NAME OF FACILITY	YEAR ESTAB	LOCATION		ACREAGE		REMARKS
			COUNTY	MUNICIPALITY	SUB-TOTAL	TOTAL	
S-DOT-28.5	Lawrence Twp. Maint. Yard	1970	Mercer	Lawrence Twp.	6.4		
S-DOT-28.6	Washington Twp. Maint. Yard Rt 130	1971	Mercer	Washington Twp.	5.2		Transfer to DOT by Dept of Law & Public Safety (by purchase)
S-DOT-29.1	Ocean Twp. Maint. Yard Rt 66 & Bowne Road	1962	Monmouth	Neptune Twp.	3.7		
S-DOT-29.2	Hazlet Twp. Maint. Yard Rt 79 & Parkway	1963	Monmouth	Hazlet Twp.	1.9		R.O.W. Parcel acquired by Garden State Parkway
S-DOT-29.3	Brielle Old Bridge Road	1964	Monmouth	Brielle Boro	2.5		
S-DOT-29.4	Freehold Maint. Yard	1969	Monmouth	Freehold Twp.	16.8		Part of Acquisition to be used for Rt 33 Bypass R.O.W.
S-DOT-29.5	Wall Twp. Maint. Facility	1971	Monmouth	Wall Twp.	6.2		Part of Acquisition used for New Rt 35 R.O.W.
S-DOT-30.1	Bridgeport Maint. Yard Rt 130	1958	Gloucester	Logan Twp.	4.3		
S-DOT-30.2	Deepwater Maint. Yard	1965	Salem	Pennsville Twp.	17.0		R.O.W. (Parcels)
S-DOT-31.1	Hammonton Garage Egg Harbor Twp.	1920	Atlantic	Hammonton Twp.	1.0		
S-DOT-31.2	Elmer Maint. Yard Rt 40	1931	Salem	Pittsgrove Twp.	5.0		
S-DOT-31.3	Folsom Maint. Yard Rt 54	1945	Atlantic	Folsom Boro	10.0		
S-DOT-31.4	Deptford Twp. Maint. Yard Rts 41 & 42	1959	Gloucester	Deptford Twp.	17.0		
S-DOT-31.5	Cherry Hill District Office Garage & Maint. Yard Rt 70 & Turnpike	1960	Camden	Cherry Hill Twp.	16.8		

STATE OWNED REAL PROPERTY IN NEW JERSEY

PLANNING DIVISION CODE NO	NAME OF FACILITY	YEAR ESTAB	LOCATION		ACREAGE		REMARKS
			COUNTY	MUNICIPALITY	SUB-TOTAL	TOTAL	
S-DOT-31.6	Glassboro Maint. Yard Grove St.	1963	Gloucester	Glassboro Boro	2.1		
S-DOT-31.7	Pennsauken Maint. Yard Federal St.	1965	Camden	Pennsauken Twp.	2.8		
S-DOT-31.8	West Deptford Maint. Yard Rt 130	1970	Gloucester	West Deptford Twp.	4.2		
S-DOT-32.1	Lebanon State Forest Yard Rt 70	1970	Burlington	Pemberton Twp.	1.7		Located on State Park Property under E.P.
S-DOT-33.1	Toms River Garage & Maint. Yard - Rt 37	1954	Ocean	Dover Twp.	7.9		
S-DOT-33.2	Manahawkin Maint. Yard Rts 9 & 72	1959	Ocean	Stafford Twp.	2.1		
S-DOT-34.1	Burdens Hill Maint. Yard Rt 49	1965	Salem	Quinton Twp.	16.5		
S-DOT-34.2	Bridgeton Maint. Yard	1969	Cumberland	Upper Deerfield Twp.	19.0		Transferred from Defense to Dept of Transportation 1969
S-DOT-35.1	Vineland Garage - Rt 47	1938	Cumberland	Vineland City	2.8		
S-DOT-35.2	Mizpah Maint. Yard - Rt 40	1958	Atlantic	Hamilton Twp.	5.9		
S-DOT-35.3	Cumberland Maint. Yard Rt 49	1960	Cumberland	Maurice River	2.5		

STATE OWNED REAL PROPERTY IN NEW JERSEY

PLANNING DIVISION CODE NO	NAME OF FACILITY	YEAR ESTAB	LOCATION		ACREAGE		REMARKS
			COUNTY	MUNICIPALITY	SUB-TOTAL	TOTAL	
S-DOT-35.4	Buena Maint. Yard Rts 54 & 40	1970	Atlantic	Buena Boro	3.9		
S-DOT-36.1	McKee City Maint. Yard Rt 40	1939	Atlantic	Hamilton Twp.	5.0		
S-DOT-36.2	Pomona Maint. Yard	1948	Atlantic	Galloway Twp.	3.0		
S-DOT-36.3	Petersburg Maint. Yard Rt 50	1957	Cape May	Upper Twp.	10.5		
S-DOT-36.4	Mays Landing Maint. Yard Rt 50	1960	Atlantic	Hamilton Twp.	7.1		
S-DOT-37.1	Middle Twp. Maint. Yard Rt 9	1968	Cape May	Middle Twp.	2.8		

STATE OWNED REAL PROPERTY IN NEW JERSEY

PLANNING DIVISION CODE NO	NAME OF FACILITY	YEAR ESTAB	LOCATION		ACREAGE		REMARKS
			COUNTY	MUNICIPALITY	SUB-TOTAL	TOTAL	
DEPARTMENT OF LAW & PUBLIC SAFETY Division of State Police						380.3 143.8	
S-LSP-22.1	Remote Radio Tower	1969	Sussex	Wantage Twp.	1.5	1.5	
S-LSP-23.1	Little Falls - Remote Radio Tower	1969	Passaic Bergen	Wanaque Boro Oakland Boro	1.4 0.4	1.8	
S-LSP-24.1	Washington Station	1955	Warren	Mansfield Twp.	4.0	4.0	
S-LSP-24.2	Remote Radio Tower	1969	Warren	Harmony Twp.	0.9	0.9	
S-LSP-24.3	Remote Radio Tower	1969	Hunterdon	Franklin Twp.	1.0	1.0	
S-LSP-25.1	Troop "B" Headquarters (Morristown)	1931	Morris	Morris Twp.	6.8	6.8	
S-LSP-25.2	Somerville S.P. Station	1952	Somerset	Bridgewater Twp.	6.3	6.3	
S-LSP-25.3	Netcong S.P. Station	1963	Morris	Roxbury Twp.	2.8	2.8	
S-LSP-26.1	Little Falls S.P. Station	1961	Passaic	Little Falls Twp.	3.6	3.6	
S-LSP-27.1	Division Headquarters (Wilburtha)	1921	Mercer	Ewing Twp.	67.2	67.2	
S-LSP-27.2	Edgewater Park S.P. Station	1955	Burlington	Edgewater Park Twp.	10.0	10.0	
S-LSP-28.1	Bordentown S.P. Sub-Station	1951	Burlington	Bordentown Twp.	3.0	3.0	
S-LSP-28.2	Troop "C" Headquarters (Princeton)	1951	Middlesex	Plainsboro Twp.	3.3	3.3	

STATE OWNED REAL PROPERTY IN NEW JERSEY

PLANNING DIVISION CODE NO	NAME OF FACILITY	YEAR ESTAB	LOCATION		ACREAGE		REMARKS
			COUNTY	MUNICIPALITY	SUB-TOTAL	TOTAL	
S-LSP-28.3	Hightstown S.P. Station	1962	Mercer	East Windsor Twp.	3.8	3.8	
S-LSP-28.4	Fort Dix S.P. Station	1956	Burlington	North Hanover Twp.	3.0	3.0	
S-LSP-31.1	Berlin S.P. Station	1955	Camden	Berlin Twp.	9.8	9.8	
S-LSP-31.2	Remote Radio Tower	1969	Camden	Voorhees Twp.	1.5	1.5	
S-LSP-32.1	Remote Radio Tower	1969	Ocean	Union Twp.	1.0	1.0	
S-LSP-32.2	Troop "A" Headquarters (Hammonton)	1943	Atlantic	Mullica Twp.	12.0	12.0	
S-LSP-37.1	Remote Radio Tower	1969	Cape May	Dennis Twp.	0.5	0.5	

STATE OWNED REAL PROPERTY IN NEW JERSEY

PLANNING DIVISION CODE NO	NAME OF FACILITY	YEAR ESTAB	LOCATION		ACREAGE		REMARKS
			COUNTY	MUNICIPALITY	SUB-TOTAL	TOTAL	
Division of Motor Vehicles						236.5	
S-LMV-22.1	Newton	1953	Sussex	Newton Town	0.9	0.9	Presently occupied by 1 lane inspection station
S-LMV-24.1	Washington	1953	Warren	Washington Boro	0.9	0.9	Presently occupied by 1 lane inspection station
S-LMV-24.2	Washington	1955	Warren	Hansfield Twp.	15.0	15.0	Vacant land being held for relocation of existing Washington Station when volume and finances permit
S-LMV-25.1	Morristown	1953	Morris	Morristown Town	0.3	0.3	Presently occupied by 2 lane inspection station and stacking area
S-LMV-25.2	Westfield	1953	Union	Westfield Town	0.2	0.2	Presently occupied by 1 lane inspection station with additional outside lane
S-LMV-25.3	Randolph	1969	Morris	Randolph Twp.	19.9	19.9	Vacant land being held for additional station in Morris County when volume & finances permit
S-LMV-26.1	Elizabeth	1952	Union	Elizabeth City	0.3	0.3	Presently occupied by equipment repair center serving entire inspection system
S-LMV-26.2	Newark	1953	Essex	Newark City	0.4	0.4	Presently occupied by 4 lane inspection station. This will be sold to Newark Housing Authority in near future
S-LMV-26.3	Rahway	1955	Union	Rahway City	15.0	15.0	Presently occupied by 3 lane inspection station, Agency and Driver Examination Center

STATE OWNED REAL PROPERTY IN NEW JERSEY

PLANNING DIVISION CODE NO	NAME OF FACILITY	YEAR ESTAB	LOCATION		ACREAGE		REMARKS
			COUNTY	MUNICIPALITY	SUB-TOTAL	TOTAL	
S-LMV-26.4	Newark (Ironbound)	1955	Essex	Newark City	7.5	7.5	Vacant land. We are attempting to dispose of this
S-LMV-26.5	Wayne	1957	Passaic	Wayne Twp.	13.9	13.9	Presently occupied by 3 lane inspection station, Agency and Driver Examination Center
S-LMV-26.6	Lodi	1958	Bergen	Lodi Boro	13.4	13.4	Presently occupied by 3 lane inspection station, Agency and Driver Examination Center
S-LMV-26.7	Paramus	1960	Bergen	Paramus Boro	10.5	10.5	Presently occupied by 3 lane inspection station
S-LMV-26.8	Secaucus	1961	Hudson	Secaucus Town	6.1	6.1	Presently occupied by 3 lane inspection station
S-LMV-26.9	Newark	1971	Essex	Newark City	4.0	4.0	Vacant land will be developed into 2 lane inspection station, Agency and Driver Exam. Center in part replacement of existing NK facility
S-LMV-26.10	Newark	1971	Essex	Newark City	1.4	1.4	Vacant land title being returned to Dept of Transportation
S-LMV-27.1	Heavy Duty Laboratory	1938	Mercer	Trenton City	0.3	0.3	Surplus as Inspection Station, needed for storage. Use by Civil Service & Weights and Measures
S-LMV-28.1	Washington Twp.	1955	Mercer	Washington Twp.	15.0	15.0	Vacant land. D.O.T. requests 5 acres, balance retained for DMV for future use
S-LMV-28.2	Trenton	1955	Mercer	Lawrence Twp.	48.0	48.0	Presently occupied by 3 lane inspection station, Agency and Driver Examination Center
S-LMV-29.1	Freehold	1953	Monmouth	Freehold Twp.	0.8	0.8	Presently occupied by 1 in-door and 1 out-door inspection lane

STATE OWNED REAL PROPERTY IN NEW JERSEY

PLANNING DIVISION CODE NO	NAME OF FACILITY	YEAR ESTAB	LOCATION		ACREAGE		REMARKS
			COUNTY	MUNICIPALITY	SUB-TOTAL	TOTAL	
S-LMV-29.2	Asbury Park	1953	Monmouth	Asbury Park City	0.4	0.4	Presently occupied by 2 lane inspection station
S-LMV-29.3	Eatontown	1957	Monmouth	Eatontown Boro	13.5	13.5	Presently occupied by 3 lane inspection station, Agency and Driver Examination Center
S-LMV-30.1	Salem	1953	Salem	Mannington Twp.	0.8	0.8	Presently occupied by 1 lane inspection station
S-LMV-31.1	Woodbury	1948	Gloucester	Woodbury City	0.2	0.2	Presently occupied by 1 lane inspection station. This property is for sale having been replaced by new facility
S-LMV-31.2	Mount Holly	1953	Burlington	Lumberton Twp.	0.3	0.3	Presently occupied by 1 lane inspection station
S-LMV-31.3	Camden	1955	Camden	Cherry Hill Twp.	8.5	8.5	Presently occupied by 3 lane inspection station
S-LMV-31.4	Woodbury	1971	Gloucester	Deptford Twp.	20.0	20.0	Presently occupied by 2 lane inspection station. Just completed
S-LMV-33.1	Toms River	1953	Ocean	Dover Twp.	0.6	0.6	Presently occupied by 1 in-door and 1 out-door lane inspection station
S-LMV-33.2	Forked River	1969	Ocean	Lacey Twp.	9.5	9.5	Vacant land presently for sale
S-LMV-33.3	Manahawkin	1971	Ocean	Stafford Twp.	5.0	5.0	Presently occupied by 1 lane inspection station
S-LMV-34.1	Bridgeton	1954	Cumberland	Upper Deerfield Twp.	2.7	2.7	Presently occupied by 1 lane inspection station
S-LMV-35.1	Millville	1953	Cumberland	Millville City	0.7	0.7	Presently occupied by 1 lane inspection station
S-LMV-37.1	Cape May	1953	Cape May	Middle Twp.	0.5	0.5	Presently occupied by 1 lane inspection station

STATE OWNED REAL PROPERTY IN NEW JERSEY

PLANNING DIVISION CODE NO	NAME OF FACILITY	YEAR ESTAB	LOCATION		ACREAGE		REMARKS
			COUNTY	MUNICIPALITY	SUB-TOTAL	TOTAL	
DEPARTMENT OF TREASURY						56.7	
S-T-27.1	159-163 W. Hanover St.	1915	Mercer	Trenton City	0.4	0.4	State Laboratory & Child Welfare Building
S-T-27.2	State Office Bldg. 135 W. Hanover St.	1921	Mercer	Trenton City	0.7	0.7	Occupied by Dept of Institutions and Agencies
S-T-27.3	136 W. State St.	1921	Mercer	Trenton City	0.1	0.1	Walk-Way to Hanover Street
S-T-27.4	Parking Area #5	1924	Mercer	Trenton City	6.0	6.0	South of War Memorial Building
S-T-27.5	John Fitch Plaza and Parking Area	1961	Mercer	Trenton City	21.6	21.6	Occupied by Dept's of Environmental Protection, Labor & Industry, Health and Agriculture
S-T-27.6	State House Cultural Complex from Willow to Calhoun Streets	N.A. 1963	Mercer	Trenton City	26.1	26.1	Includes 101, 105, 107, 109, 113, and 115 West State St. Old Barracks, State Capitol, Annex, Library, State Museum, Auditorium, Planetarium, Dept of Education and All Parking Areas
S-T-27.7	134 West State St.	1963	Mercer	Trenton City	0.1	0.1	Occupied by Dept of Treasury
S-T-27.8	138 West State St.	1963	Mercer	Trenton City	0.1	0.1	Vacant Lot, Adjacent to Hanover St. Walk-Way
S-T-27.9	Parking Area Memorial Dr.	1965	Mercer	Trenton City	1.4	1.4	Leased to Trenton Parking Authority
S-T-27.10	187 W. Hanover St.	1969	Mercer	Trenton City	0.2	0.2	Occupied by Weights & Measures Division of Consumer Affairs, Dept. of Law & Public Safety

SUMMARY OF NEW JERSEY MUNICIPALITIES WITH TAX EXEMPT STATUS AND COUNTY INSTITUTIONS OCCUPYING IN EXCESS OF 200 ACRES

MUNICIPALITIES WITH TAX EXEMPT STATE AND COUNTY INSTITUTIONS OCCUPYING IN EXCESS OF 200 ACRES*

INSTITUTION	MUNICIPALITY	ACREAGE
ATLANTIC COUNTY		
State Institutions		
Stockton State College	Galloway Township	1473.5
BURLINGTON COUNTY		
State Institutions		
E.R. Johnstone Training & Research Center	Bordentown	248.3
Arneytown	N. Hanover Township	225.0
New Lisbon State School	Woodland	1854.0
Youth Correctional Institution	Chesterfield	530.0
Youth Reception, Correctional	Chesterfield	50.0
County Institutions		
College	Pemberton Township	226.2
Hospital	Pemberton Township	374.8
CAMDEN COUNTY		
State Institutions		
Ancora Psychiatric Hospital	Winslow Township	785.0
County Institutions		
Utility Building	Winslow Township	240.7

Summary

INSTITUTION	MUNICIPALITY	ACREAG
CAPE MAY COUNTY		
State Institutions		
Woodbine State School	Woodbine Borough	206.
County Institutions		
Administration Building	Middle Township	26.
Court House	Middle Township	7.
Mosquito Control	Middle Township	17.
Library	Middle Township	.
Schools	Middle Township	89.
Health Center	Middle Township	55.
Nursing Home	Middle Township	14.
Municipal Building	Middle Township	150.
Airport	Lower Township	926.
CUMBERLAND COUNTY		
State Institutions		
Vineland State School	Vineland	208.
Vineland State, Almond Road	Vineland	77.
Cumberland County Day Care	Vineland	3.
N.J. Home for Disabled Soldiers	Vineland	30.
State Prison, Leesburg	Maurice River Township	1094.
HUNTERDON COUNTY		
State Institutions		
Hunterdon State School	Union	108.
Correctional Institution for Women	Union	226.

Summary

INSTITUTION	MUNICIPALITY	ACREAGE
Youth Correctional Institution Annandale	Clinton	721.0
Residential Group Center	East Amwell	221.9
N.J. Hospital for Chest Diseases, Glen Gardner	Lebanon Township	535.0
MERCER COUNTY		
State Institutions		
Trenton Psychiatric Hospital Trenton	Ewing Township	769.2
Mercer County Day Center	Ewing Township	9.9
Training School for Girls	Ewing Township	74.9
Unit for Hard to Place Children	Ewing Township	6.0
Trenton State College	Ewing Township	208.2
County Institutions		
College	West Windsor Township	236.3
Schools	West Windsor Township	7.5
Administration Building	West Windsor Township	22.7
Penal Institution	Hopewell Township	260.3
Historic Sites	Hamilton Township	172.6
Hospital	Hamilton Township	16.8
College	Hamilton Township	27.6
Airport	Ewing Township	137.8
Community Center	Ewing Township	167.1
MIDDLESEX COUNTY		
State Institutions		
Woodbridge State School	Woodbridge	64.9
Middlesex County Day Care	Woodbridge	5.0
State Prison Rahway	Woodbridge	169.7

Summary

INSTITUTION	MUNICIPALITY	ACREAGE
N.J. Home for Disabled Soldiers	Woodbridge	20.0
Emergency Child Reception Center	Woodbridge	5.3
Training School for Boys	Monroe Township	662.0
MONMOUTH COUNTY		
State Institutions		
Marlboro State Hospital	Marlboro Township	980.0
County Institutions		
College	Middleton Township	511.5
College	Randolph Township	218.6
MORRIS COUNTY		
State Institutions		
Greystone Park Psychiatric Hospital	Parsippany-Troy Hills	857.4
Greystone Park Psychiatric Hospital	Morris Township	200.4
Morris County Day Care	Morris Township	17.2
OCEAN COUNTY		
County Institutions		
College	Dover Township	576.0
Airport	Lacey Township	358.4

Summary

INSTITUTION	MUNICIPALITY	ACREAGE
SOMERSET COUNTY		
State Institutions		
New Jersey Neuro-Psychiatric Institution	Montgomery	932.0
Training School for Boys	Montgomery	14.0
County Institutions		
College	Branchburg Township	227.2
SUSSEX COUNTY		
State Institutions		
Rutgers, the State University	Wantage Township	565.9
County Institutions		
Weighing Station	Frankford Township	199.3
Health Center	Frankford Township	47.0

* State institutions compiled from statistics provided by the Division of State and Regional Planning, Department of Community Affairs. County institutions compiled from statistics provided by the Department of Treasury, Division of Taxation, Local Property and Public Utility Branch.

NOTE: Bergen and Essex Counties have not been included in the above schedule.

LETTER DATED FEBRUARY 26, 1980 REGARDING GOVERNMENTAL EXPENDITURES AND BURDENS OF THE TOWNSHIP OF MAHWAH

TOWNSHIP OF MAHWAH

MUNICIPAL BUILDING
211 FRANKLIN TURNPIKE
MAHWAH, NEW JERSEY 07430

James J. Pascale
Township Business Administrator

Area Code 201
529-5717

February 26, 1980
#2-122-80

Mr. Brian T. Campion
Breslin and Breslin
41 Main Street
Hackensack, New Jersey 07601

SUBJECT: Mahwah Tax Rebate Case

Dear Mr. Campion:

Pursuant to your letter dated February 14, 1980, in which you request certain documentation concerning the above captioned matter, attached please find:

1. A comparison of various public safety appropriations and expenditures from 1972 through 1979 and

2. A copy of a letter from Chief William Russo which indicates the number of service calls made by the Police, Fire Department, and Ambulance Corp. for the years 1975 through 1979.

Letter

If you have any questions, please do not hesitate to contact me.

Sincerely,

s/ James J. Pascale
James J. Pascale
Business Administrator

JJP:mrg
cc: Mr. Ralph Coviello, President Ambulance Corp #1
Robert Roe, Fire Chief
William Russo, Police Chief

Letter

TOWNSHIP OF MAHWAH

DEPARTMENT OF POLICE
MAHWAH, N.J. 07430

William Russo
Chief of Police

Telephone
529-1000

February 21, 1980

To: Mr. James Pascale

From: Chief William Russo

Re: Mahwah Tax Rebate Case

Dear Mr. Pascale:

In answer to the letter received from the Law Offices of Breslin and Breslin requesting the amount of calls answered for the services of the Mahwah Police Department, Fire Department, and Ambulance for the years 1972 through 1979 are as follows:

	1975	1976	1977	1978	1979
Police	331	219	263	274	287
Fire Department	5	3	2	3	3
Ambulance	16	16	13	34	17

The College was built and put into operation by 1975.

Sincerely,

s/ Chief William Russo
Chief William Russo

WR:ina

Letter

COMPARISON OF VARIOUS PUBLIC SAFETY

APPROPRIATIONS + EXPENDITURES

1972-1979

Dept.	Police		Fire		Ambulance #1	
	Budget	Actual	Budget	Actual	Budget	Actual
Year						
1972	$524,085.00	$499,581.61	$78,200.00	$73,701.48	-----	-----
1973	549,295.00	528,021.45	87,085.00	77,350.20	-----	-----
1974	626,812.00	N.A.	98,400.00	N.A.	-----	-----
1975	N.A.	711,487.36	N.A.	134,224.07	N.A.	$5,080.0
1976	754,836.00	764,292.52	79,270.00	49,353.79	$5,800.00	5,311.9
1977	862,615.00	849,899.76	74,800.00	61,963.28	10,000.00	9,606.0
1978	895,295.00	893,210.82	78,800.00	62,411.11	12,500.00	12,500.0
1979	975,312.00	999,733.97	83,525.00	81,680.92	13,125.00	13,150.0

N.A. Not Available

Letter

MAHWAH TAX REBATE CASE

Total Number of Police, Fire and Ambulance Calls for the following years:

1974

Fire: 128

Ambulance: 426

Police: 5,593

TOTAL: 6,147

1975

Fire: 136

Ambulance: 502

Police: 6,550

TOTAL: 7,188

1976

Fire: 172

Ambulance: 578

Police: 6,239

TOTAL: 6,989

Letter

1977

Fire: 177

Ambulance: 665

Police: 6,093

TOTAL: 6,935

1978

Fire: 199

Ambulance: 816

Police: 7,180

TOTAL: 8,195

1979

Fire: 165

Ambulance: 755

Police: 7,293

TOTAL: 8,213

TRIAL TRANSCRIPT OF MAY 28, 1980, PAGES 2 TO 10

[Commencing at page 2.]

THE COURT: Where are we this morning?

MR. ANDORA: We were marking various stipulated areas in, Judge. If you want us to complete that process, I only have two more matters and than I'm done with that area.

THE COURT: When we were last here we marked the State compilation and the County compilations as far as exempt properties are concerned for identification. We agreed that individual intervenors would not be required to testify. Mahwah stipulated that it has 25.7 square miles and 16,448 acres; also that the college assessment would have been $27,065,100 and that the Academy lands would have been $1,684,700, and that's where we were when we finished.

MR. ANDORA: Deputy Attorney General Haushalter has supplied us with the 1979 Division of Taxation printout of exempt properties, your honor.

THE COURT: Throughout the entire State?

MR. ANDORA: Yes. He just handed [3] them to me.

MR. HAUSHALTER: That's one copy, Judge.

MR. ANDORA: One copy, because I haven't even examined them. They're not three separate copies of the same thing.

MR. HAUSHALTER: One copy.

MR. ANDORA: We ought to have these marked, then, Judge, in lieu of the 1973 State exempt property compilation.

THE COURT: Well, we already have that marked D-1 for identification. We can leave them alone. Why don't we mark the 1979 State compilation, then, as D-3 for identification.

(Foregoing received and marked D-3 for identification by the Reporter.)

MR. ANDORA: And that's going to be almost impossible to try to copy, judge. What we may want to do is borrow those back from the Court when it comes to the briefing stage so we can extract the data out. We'll try to Xerox them but I think [4] that will take forever and a day.

THE COURT: I don't see any problem with that. We'll just show it in the record that you have them and they're marked only for identification.

MR. ANDORA: Now, the last area is the area of municipal services, the police, fire and ambulance calls, in response to the interrogatories that were the subject of a motion before your Honor back in the early part of the year. We agreed to accept information in lieu of answers to the interrogatories. Mahwah has provided that information in a letter which came to me and initially addressed to Mr. Campion consisting of a letter dated February 26, 1980. The second part of that is what Mr. Campion handed me this morning, and that is their total calls made municipalwise. The one I'll hand you first for stipulation and for marking is the letter with the calls of a police, fire and

ambulance nature to the college, and the second one would be for the entire township.

THE COURT: Thess, then, can be [5] marked right into evidence with no objection?

MR. CAMPION: That' s correct.

THE COURT: Then the covering letter here is dated February 26, 1980 addressed to Mr. Campion from Mr. Pascale, the Business Administrator, and added to that there are two pages attached. That will be marked D-4 in evidence.

MR. MORRICE: Before they're marked, may I be heard. I'm not exactly sure of the purpose of this offer, and obviously if it doesn't go to the constitutionality issue I wouldn't have any standing at all to even speak.

THE COURT: Perhaps Mr. Andora can explain exactly what he has in mind.

MR. ANDORA: Yes. it goes to the constitutionality issue. It goes to the burden that Mahwah sustains, or lack of burden it sustains by virtue of the exempted properties in the municipality for which it seeks a rebate compared to the total services it renders to all of its residents throughout the municipality, and the appropriateness and the constitutionality of the remedy of [6] the rebate which, in our opinion, far exceeds the burden.

I'll be brief and succinct and that's it.

MR. MORRICE: If your Honor please, I think the Appellate Division in Capiello has already indicated what the burden is that the Legislature looked to when they established this statute, and the burden was not the municipal services necessarily that were offered or extended by the municipality to the exempt property, but rather the burden of sustaining this tax exempt land in the municipality without the benefit of a return to the taxpayer.

Judge Antell's decision sets it out very clearly in the case in the Essex County Board of Taxation which was recently decided on April 16. It was indicated during the trial, and I believe in their opinion, that services were not relevant to the issue; that the statute doesn't require any services to be performed by the municipality, and the only question, the only criteria to be judged was whether or not [7] 200 acres were in active use, and on that basis they didn't hear anything about services.

Now, of course that aspect of it went to the merit of the case and not to the constitutionality of it, but I think the argument is still pertinent with respect to the constitutionality.

The Court has indicated in the Capiello Appellate Division decision that the burden was not services, and I think on that basis this offer would be irrelevant.

MR. ANDORA: The Supreme Court never reached the issue of constitutionality in the Capiello case. They avoided that issue. It wasn't necessary to decide it, so I don't see how Mr. Morrice can take that stand. This question has never been completely and in its fullest sense explored, from what I can see in any of these prior cases of which there have only been a couple. The only one

to reach the Supreme Court was the Capiello case. They never decided that issue, and all the facts ought to be before this Court and the Supreme [8] Court if it gets there, and I'll defer to my colleague, Judge Schneider, who argued the case in the Supreme Court.

MR. SCHNEIDER: He's correct. He's correct that the Supreme Court —

THE COURT: Is that your brother that argued it?

MR. SCHNEIDER: I did. He just promoted me, but the Supreme Court did not touch in any way on the constitutionality. It's a wide open subject and it may be determined in this case.

THE COURT: I understand that. We'll note your objection, Mr. Morrice. We'll mark this D-4 in evidence. Whatever weight it deserves with respect to the constitutional question, it will get.

(Letter dated February 26, 1980 from Mahwah's Business Administrator to Mr. Campion consisting of three pages received and marked D-4 in evidence by the Reporter.)

MR. ANDORA: The companion part is the sheet that Mahwah furnished us this [9] morning, Judge, on the total services.

THE COURT: This is the total services rendered to all citizens of Mahwah for 1974 through 1979 regarding fire, ambulance and police?

MR. ANDORA: Yes.

That's correct, isn't it, Mr. Campion?

MR. CAMPION: That's what it represents.

THE COURT: Mr. Morrice, you would have the same objection to this, I assume?

MR. MORRICE: Yes.

MR.CAMPION: I would object to this sheet. It does not go directly to the services of the college and I think it's of dubious relevance, what the services to the rest of the community are.

THE COURT: Well, I assume that you're offering it just for purposes of comparison, Mr. Andora?

MR. ANDORA: That's right. An examination of D-4, the second page, makes it perfectly apparent why I'm offering it.

THE COURT: All right. Again for [10] the reasons that I stated earlier, we will note the objection of Mr. Morrice and Mr. Campion and we'll mark this D-5 in evidence.

(List of total police, fire and ambulance services rendered to Township of Mahwah received and marked D-5 in evidence by thc Reporter.)

MR. ANDORA: That's all we have, Judge, to offer at this point.

MR. LANGAN: Your Honor, if I might, as we have previously mentioned to the Court, there was a question of calling the registrar of Ramapo College to this Court, and Mr. Campion and Mr. Corriston thought that that wouldn't be necessary, and I have a letter from the Office of the Registrar addressed to myself with the school seal attached to it. It's a two-page letter, your Honor, which indicates thc number of students the number of faculty, courses offered, the FTE — that's the Full-Time Equivalent students — the course hours completed, student credit hours, and Bergen County * * *

No. 84-1615

FILED
MAY 10 1985
ALEXANDER L. STEVAS, CLERK

In The

Supreme Court of the United States

October Term, 1984

BOROUGH OF DEMAREST, ELIAS M. ELIASOF, EUGENE BARDEN, and EDWARD W. JANSEN,

Petitioners,

vs.

TOWNSHIP OF MAHWAH, JOANNE MAKELY, FRANK P. KRAUS, NEILAN BOMAN, and BERGEN COUNTY BOARD OF TAXATION,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of New Jersey

RESPONDENTS' BRIEF IN OPPOSITION

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RESPONDENTS' BRIEF IN OPPOSITION

STATEMENT OF THE CASE

This case involves a challenge by a municipal corporation, the Borough of Demarest, and several individuals contesting the validity of a statute of the State of New Jersey. The subject statute N.J.S.A. 54:4-5 was adopted in and has been in operation since the year 1922.

Petitioner argues that the subject statute is a taxation statute which violates the principle of equal protection. In fact the subject statute is not a taxation statute. The subject statute provides financial assistance to certain municipalities in the most heavily populated counties of the state to enable them to provide support services to large county and state facilities located within the municipality and to compensate the municipality for the loss of taxable ratables.

The subject statute was challenged as being in violation of the special legislation provision of the New Jersey Constitution. N.J. Constitution Article IV, section 7, par. 9. (1947). The petitioner did not actively assert that the statute also violated the United States Constitution. Although the petitioner Demarest raises the issue of a violation of the Equal Protection Clause of the United States Constitution in its petition, the challenge below was essentially addressed to the provisions of the New Jersey Constitution. The absence of references to the federal issues in the three state court decisions is not an oversight. The only reference to a constitutional issue in petitioners' appendix is a reference to one line of the pretrial order line 16(b) "Constitutionality of N.J.S.A. 54:4-5". There is no reference to the Federal Constitution. Nor is there any reference to the Federal Constitution in any of the attachments to the pretrial order which were submitted by the parties.

On pages 6 and 7 of the petition, petitioner argues that there should not be a factual distinction between the respondent Township of Mahwah in Bergen County and other similarly situated municipalities in other counties. This factual argument should be rejected for two reasons. First, the mere allegation of state ownership is not sufficient to satisfy the requirements of the subject statute. The document relied upon by petitioner merely demonstrates state ownership. At the lengthy trial of the case the respondent proved "actual governmental use" of th ubject

properties. There was no proof whatsoever that there was "actual governmental use" of the acreage in other municipalities referred to by respondent in its statement of the case. At the trial below, petitioner argued that the respondent was required to prove ownership and actual use so as to satisfy the "occupancy" requirement of the challenged statute. A reference on appeal to total ownership of acreage located elsewhere without proof of actual usage does not prove that the other municipalities are similar.

Secondly, it should be noted that the document referred to by petitioner and reproduced in its appendix was not admitted into evidence. The documents identified as a compilation of state owned property were not admitted into evidence. *See* Petitioner's Appendix p. 155a. All references to acreage in other municipalities should therefore be disregarded for the two reasons set forth above.

ARGUMENT

The subject statute, N.J.S.A. 54:4-5 is not a taxation statute. The statute provides a mechanism by which a municipality receives financial assistance when tax exempt state and county institutions are located in the most populated counties. The financial assistance offsets the demonstrated actual costs of services rendered to the institution as well as intangible costs including reduced property values and depreciation of municipal infrastructure. The statute also provided financial relief for loss of taxable properties. The rationale of the statute is not limited to reimbursement of actual costs.

The monies which are partially rebated to the municipality under the statute were collected neither as a tax on an individual nor as a tax on property. The monies are collected from a variety of sources. The redistribution of these monies is merely an apportionment of the costs of county government among the

municipalities comprising the county. *See Meadowlands Regional Dev. Agency v. State*, 63 N.J. 35 at 46 (1973), *cert. denied*, 414 U.S. 991 (1973).

The respondent contends that the petition does not assert any federal issue. However, even if a federal issue were presented, it is not substantial. The subject statute was reviewed by the New Jersey Supreme Court under the "special legislation" provisions of the New Jersey Constitution. The criteria applied by the New Jersey Supreme Court when reviewing legislation challenged under the special legislation prohibition have been equated with the review criteria established for a review of denial of equal protection under the Federal Constitution. *Harvey v. Essex County Board of Freeholders*, 30 N.J. 381 at 394 (1959) and *McKenny v. Byrne*, 82 N.J. 304 at 314-316 (1980).

Since there are no fundamental rights or suspect categories involved in the application of this fiscal statute of distribution, there is no invidious discrimination in the application of this statute. The Court should defer to the legislative classification. There is a rational basis for the legislative classification. Legislative classifications in the area of finance and taxation cannot be perfect and free of all discriminatory impact. The distributive scheme should therefore be supported on any conceivable rational basis. *San Antonio Independence District v. Rodriguez*, 411 U.S. 1, 93 S. Ct. 1278, 36 L.Ed 2d 16 (1973).

The cases cited by petitioner in its Argument in fact support the respondent's contentions.

In *Regan v. Taxation With Representation*, ____ U.S. ____, 76 L. Ed. 2d 129, 103 S. Ct. ____ (1983), the United States Supreme Court recapitulated the principle that local legislatures have especially broad latitude in creating classifications and distinctions in this area of the law. Only by the most explicit

demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes can the presumption of constitutionality be overcome. The discrimination required to declare local fiscal legislation unconstitutional under the provisions of the United States Constitution or under the New Jersey Constitution has not been shown in this case.

CONCLUSION

For the reasons set forth above, the respondent herein submits that a writ of certiorari should not be granted in this case.

Respectfully submitted,

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FILED
MAY 21 1985
ALEXANDER L. STEVAS
CLERK

No. 84-1615

In The
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TOWNSHIP OF MAHWAH, JOANNE MAKELY, FRANK P. KRAUS, NEILAN BOMAN, and BERGEN COUNTY BOARD OF TAXATION,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of New Jersey

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

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COUNTERSTATEMENT OF THE CASE

Petitioners, Borough of Demarest, Elias M. Eliasof, Eugene Barden and Edward W. Jansen,* are seeking, by writ of *certiorari,* to have this Court review a decision by the Supreme Court of New Jersey sustaining the constitutionality of a statute (*N.J.S.A.* 54:4-5, now repealed**) granting a rebate of county taxes to the Township of Mahwah, a municipality in the County of Bergen, State of New Jersey. The jurisdiction of this Court is invoked under 28 *U.S.C.* § 1257(3). The rebate statute is being challenged on equal protection grounds. For the period 1974 to 1980, the tax years in question, *N.J.S.A.* 54:4-5 provided a rebate of a portion of a municipality's share of county taxes if the municipality were in a first-class county with a population in excess of 800,000 and said municipality had within its borders a state or county facility of 200 acres or more of land.

The Bergen County Board of Taxation, an original defendant in this matter, annually adopts, in accordance with *N.J.S.A.* 54:4-49 to 52, a table of aggregates on which it computes the tax rates for each of the seventy municipalities in Bergen County. The local property taxes are raised to meet the costs of municipal, school, county library, county health and county budgets and are imposed upon each constituent municipality. The county budget is apportioned among the seventy municipalities in Bergen County based on the ratable wealth of each constituent municipality. In the event a municipality qualifies

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* The Borough of Demarest is a municipality in Bergen County. The three individual petitioners are residents of Bergen County.

** The New Jersey Legislature repealed *N.J.S.A.* 54:4-5 effective for the 1982 tax year and replaced it with different rebate statutes (*N.J.S.A.* 54:4-5a and 5b) which no longer qualify the Township of Mahwah for a rebate of county taxes in future tax years.

for a rebate of one-half of its county taxes under *N.J.S.A.* 54:4-5, the other 69 municipalities in Bergen County are required to proportionately absorb the rebate by having their share of county taxes increased.

For the 1974 to 1980 tax years, the Bergen County Board of Taxation did not grant Mahwah any rebate of its county taxes. Mahwah appealed such determination to the Tax Court of New Jersey, which issued an opinion on November 20, 1981 (3 *N.J. Tax* 513 (Tax Ct. 1981)) holding, *inter alia,* that *N.J.S.A.* 54:4-5 violated the special legislation clause (Art. IV, § VII, par. 9) of the New Jersey Constitution on the basis that the statute arbitrarily granted the rebate only to municipalities in first class counties with populations exceeding 800,000 (App. 37a). Because the statute was deemed unconstitutional, Mahwah was denied the rebate of county taxes. The matter was appealed to the Superior Court of New Jersey, Appellate Division, which affirmed the Tax Court (App. 35a). On further appeal to the Supreme Court of New Jersey, that court reversed the lower courts noting in an extensive opinion, dated January 14, 1985 and reported at 98 *N.J.* 268, — *A.*2d — (1985), that,

1. The standards for review under the special legislation clause of the New Jersey Constitution are identical with the standards applicable to an analysis of a statute's constitutionality under the Equal Protection Clause of the Fourteenth Amendment and have been consistently followed by the Supreme Court of New Jersey for many years.
2. The statute, having existed for over 60 years, is imbued with a strong presumption of validity.
3. Population generally is a valid basis for classification, particularly where the population lines

are drawn to establish a rational relationship with a proper legislative purpose.

4. There is an obvious rationale for granting a rebate of county taxes to those municipalities maintaining the requisite acreage of a tax-exempt, county or state institution which are located in a county with a population in excess of 800,000. Since the population in such counties is denser and more urbanized, such circumstances would logically lead to a more intensive use of the county or state institution and thereby place a greater burden on the host municipality.

5. The county rebate is applicable to municipalities in larger counties because the Legislature might have properly found that the rebate can be more easily absorbed, since the financial burden is reduced on a per capita basis, in the larger counties than in the smaller ones.

ARGUMENT

Since The Legislature Had A Rational And Logical Purpose In Enacting N.J.S.A. 54:4-5, That Statutory Provision Is Consistent With The Equal Protection Standards of the United States Constitution.

During the tax years in issue, *N.J.S.A.* 54:4-5 provided that,

> A taxing district in a county of the first class having in excess of 800,000 population in which there has been located a State or county institution other than a park commission or lands owned or occupied by a park commission occupying more than 200 acres and not in excess of 400 acres of land, in the aggre-

gate, shall have remitted or rebated by the county treasurer a sum equal to ½ of the county tax rate applied to the entire amount of ratables remaining subject to taxation. A taxing district in such a county of the first class in which there has been located a State or county institution other than a park commission or lands owned or occupied by a park commission occupying in excess of 400 acres of land, in the aggregate, shall have remitted or rebated by the county treasurer a sum equal to ¾ of the county tax rate applied to the entire amount of ratables remaining subject to taxation.

The rebate statute established the following criteria in order for a municipality to be eligible for a rebate of either ½ or ¾ of its apportioned share of county taxes:

(1) The municipality must be located in a county of the first class whose population exceeds 800,000;

(2) The municipality must have located within its boundaries at least 200 acres of state or county land to qualify for a rebate of one-half of the county taxes or at least 400 acres to qualify for a rebate of three-quarters of county taxes;

(3) The acreage in question must be used and occupied by a State or county institution for a purpose other than parkland.*

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* In *Bergen Cty. v. Paramus Bor.*, 79 *N.J.* 302, 399 *A.*2d 616 (1979), and *Paramus Bor. v. Capello*, 66 *N.J.* 1, 326 *A.*2d 685 (1974), the Supreme Court of New Jersey established the revelant standards that must be met by a municipality in order to qualify for either of the two rebates (½ or ¾ of county taxes). The court noted that mere ownership of the property by the appropriate public entity is not sufficient. The court defined the term "occupying" as used in the statute to connote " . . . actual governmental use". *Paramus Bor. v. Capello, supra,* 66 *N.J.* at 5. Such use must be reflected in a " . . . present intent to devote the property to a public use within a reasonable length of time." *Bergen Cty. v. Paramus Bor., supra,* 79 *N.J.* at 308.

N.J.S.A. 54:4-5 became law in 1922 (New Jersey Laws 1922, chapter 130) and initially provided a rebate of one-half of the county taxes to any taxing district in a county of the first class in which there was located a state or county institution occupying 200 acres or more of land. In the statement to this legislation, the legislature noted its concern for municipalities such as the Township of Cedar Grove in Essex County:

> This bill is proposed to correct an injustice to the Township of Cedar Grove, or in the Overbrook Hospital as situated. The township is compelled to furnish tuition to the children of the various officials and attendants employed there, and is also compelled to record the vital statistics and to furnish protection to the inhabitants of said hospital, without receiving a dollar in return.

Thus the legislature, being aware of the predicament of municipalities such as Cedar Grove in having to maintain a tax exempt county hospital without being compensated therefor, determined to provide such municipalities a rebate of a portion of their county taxes. Cedar Grove has received a rebate of one-half of its county taxes each year since the inception of the statute. During the 1960's, when Hudson County qualified as a first class county, the Town of Secaucus, which maintained a county hospital, also qualified for the rebate of one-half of its county taxes. In addition to Mahwah, one other municipality, the Bor-

ough of Paramus, may qualify for the rebate in Bergen County for certain tax years in the 1970's and 1980's.*

It is fundamental to constitutional principles that a legislature has a wide range of discretion in establishing classifications and that such discretion is especially broad in the field of taxation:

> The broad discretion as to classification possessed by a legislature in the field of taxation has long been recognized . . . [T]he passage of time has only served to underscore the wisdom of that recognitian of the large area of discretion which is needed by a legislature in formulating sound tax policies. . . . It has . . . been pointed out that *in taxation, even more than in other fields, legislatures possess the greatest freedom in classification.* Since the members of a legislature necessarily enjoy a familiarity with local conditions which this Court cannot have, the presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes. . . . [*Madden v. Kentucky*, 309 *U.S.* 83, 87-88, (1940); emphasis supplied].

See also *Regan v. Taxation with Representation of Washington*, — *U.S.* —, 76 *L.Ed*.2d 129 (1983). These principles were reaffirmed in *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 *U.S.* 356, 359 (1973):

> Where taxation is concerned and no specific federal right, apart from equal protection is imperiled, the States have large leeway in making classifications and drawing lines which in their judgment produce reasonable systems of taxation. As stated in *Allied Stores of Ohio v. Bowers*, 358 *U.S.* 522, 526-527, 3 *L.Ed*.2d 480, 79 *S.Ct.* 437:

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* Paramus' rebate claims are presently pending in the New Jersey Tax Court.

> The States have a very wide discretion in the laying of their taxes. When dealing with their proper domestic concerns, and not trenching upon the prerogatives of the National Government or violating the guaranties of the Federal Constitution, the States have the attribute of sovereign powers in devising their fiscal systems to ensure revenue and foster their local interests. Of course, the States, in the exercise of their taxing power, are subject to the requirements of the Equal Protection Clause of the Fourteenth Amendment. But that clause imposed no iron rule of equality, prohibiting the flexibility and variety that are appropriate to reasonable schemes of state taxation.

The rationale for this broad view of government's taxing powers has been explained as follows:

> [A tax] is . . . a means of distributing the burden of the cost of government. The only benefit to which the taxpayer is constitutionally entitled is that derived from his enjoyment of the privilege of living in an organized society, established and safeguarded by the devotion of taxes to public purposes. . . . Any other view would preclude the levying of taxes except as they are used to compensate for the burden on those who pay them, and would involve the abandonment of the most fundamental principle of government—that it exists primarily to provide for the common good. . . . This court has repudiated the suggestion, whenever made, that the Constitution requires the benefits derived from the expenditure of public moneys to be apportioned to the burdens of the taxpayer, or that he can resist the payment of the tax because it is not expended for purposes which are peculiarly beneficial to him. [*Carmichael v. Southern Coal & Coke Co.*, 301 *U.S.* 495, 522-523 (1931)].

The complexity of attempting to determine the fairness of taxing schemes was further recognized by this Court

in *San Antonio School District v. Rodriguez,* 411 *U.S.* 1, 41, (1973), in which it considered challenges, on equal protection grounds, to Texas' statutory method for financing public education primarily from revenues collected from local real property taxes. In affirming this statutory financing scheme, this Court stated that,

> [W]e stand on familiar ground when we continue to acknowledge that the Justices of this Court lack both the expertise and the familiarity with local problems so necessary to the making of wise decisions with respect to the raising and disposition of public revenues. Yet, we are urged to direct the States either to alter drastically the present system or to throw out the property tax altogether in favor of some form of taxation. No scheme of taxation, whether the tax is imposed on property, income or purchases of goods and services, has yet been devised which is free of all discriminatory impact. In such a complex arena in which no perfect alternatives exist, the court does well not to impose too rigorous a standard of scrutiny lest all local fiscal schemes become subjects of criticism under the Equal Protection Clause.

Similarly, in *Exxon Corp. v. Eagerton,* — *U.S.* —, 76 *L.Ed.* 2d 497, 513 (1983), this Court reiterated that it has traditionally applied a "lenient standard of rationality" to economic and commercial matters under equal protection analysis. Clearly, therefore, these decisions establish the broad discretion state legislatures may exercise in formulating fiscal arrangements and further caution the judiciary against undue interference with a state's fiscal policies.

N.J.S.A. 54:4-5 specifically involves a county tax apportionment scheme. The rebate statute, as originally

adopted and as enacted in the form of *N.J.S.A.* 54:4-5, reflects a legislative determination that municipalities located in large counties and maintaining a state or county institution occupying more than 200 (400) acres are to receive a rebate of ½ (¾) of the county taxes. The rebate of county taxes accomplishes two specific purposes: first, it provides a means for affording tax relief to a municipality which is financially burdened by the location of a state or county institution within its borders that uses and occupies more than 200 (400) acres and is exempt from local property taxes; second, it requires that the other municipalities within the county share the financial burdens for a state and county institution which serves the interests of the entire county. The legislature properly recognized, in enacting *N.J.S.A.* 54:4-5, the inevitable fiscal burdens that befall a municipality for supporting a state or county institution within its borders which uses and occupies the requisite acres but is not subject to real property taxation. The rebate statute,

> . . . is a method which the Legislature created to compensate some municipalities for revenues they would have otherwise received if the property had not been exempt from taxation, a condition which arose by virtue of public ownership and use. [*Bergen Cty. v. Paramus,* 79 *N.J.* 302, 309, 329 *A.*2d 616 (1979)].

Moreover, the Legislature also properly determined that the other municipalities in the county should share part of the expenses for maintaining such an institution by proportionately picking up the costs of the rebate of county taxes. The propriety and rationality of other municipalities in the county sharing the rebate expense

is warranted since the residents of these municipalities have the benefit and use of the state or county institution located within the same county.

The legislature, in providing for the rebate under *N.J.S.A.* 54:4-5 to municipalities in first class counties with a population in excess of 800,000, intended to restrict the rebate only to the counties with the largest county taxes and the largest population. Since the obligation to pay the county taxes was legislatively assigned to the constituent municipalities, the legislature logically determined that only those municipalities located in the largest counties should be eligible for the rebate of county taxes. Also, as the Supreme Court of New Jersey found, the rebate, by being applicable only to municipalities in the largest counties, would be absorbed by a larger group of taxpayers which could more easily bear the financial burden than would otherwise be the case if the eligibility for the rebate were in smaller, less populous counties.

The Supreme Court of New Jersey also appropriately noted that there are additional conceivable rationales for this county apportionment scheme. It is logical to assume that a municipality in a larger county would have greater demands placed upon it in supporting a state or county institution for various services (*e.g.*, police, fire, ambulance, maintenance of roads, sanitation) than a municipality in a smaller county. Such a municipality would thus be more justified in receiving the financial assistance from the remaining communities in the county whose residents have equal access to, or benefits from the state or county institution. In addition, the legislature may have recognized that counties with larger populations tend to be more urbanized and thereby place more intensive

demands on public facilities located within such counties. A municipality in such a county maintaining the requisite state or county institution may, therefore, reflect a greater need for financial compensation than a similarly situated municipality in a smaller county.

In *North v. Russell,* 427 *U.S.* 328 (1976), this Court sustained the classification of municipalities based on population under the Equal Protection Clause in the context of considering the validity of a Kentucky statutory provision which permitted lay judges to preside in small cities while requiring law-trained judges in larger cities. This Court found adequate and rational grounds for the classification and thus upheld the statutory distinction. See also *Missouri v. Lewis,* 101 *U.S.* 22 (1880).

As previously discussed, the distinction established in *N.J.S.A.* 54:4-5 between municipalities in first class counties with a population exceeding 800,000 and municipalities in less populous counties is rationally grounded. It is based on the recognition that the maintenance of a tax-exempt state or county institution of sufficient acreage by a municipality in a larger county establishes a special need for a rebate of a portion of the county taxes for the host municipality proportionately shared by the taxpayers of the other municipalities in the county. The more populous and more urbanized nature of such counties leads logically to a more intensive use of the institution by the county residents and justifies the rebate mechanism. In light of the extraordinary deference to be paid to legislative enactments relating to fiscal matters under the Equal Protection Clause, it is clear that the county rebate statute, *N.J.S.A.* 54:4-5, is based on rational underpinnings and is, therefore, conclusively valid.

The petition for writ of *certiorari* plainly does not raise a question of constitutional dimension which would warrant the granting of such extraordinary relief. Therefore, the petition should be denied.

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CONCLUSION

For the aforementioned reasons, it is respectfully submitted that the petition for writ of *certiorari* should be denied.

Respectfully submitted,

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